

*Polit. Pamph. vol. 8.*

THE  
REVOLUTION  
AND

Anti-Revolution Principles

STATED and COMPAR'D,

THE  
CONSTITUTION

Explain'd *and* Vindicated,

And the Justice and Necessity of Excluding  
the *Pretender*, Maintain'd against the Book  
Entituled, *Hereditary Right of the Crown of  
England Asserted.*

By the Author of the Two Dissuaves  
against *Jacobitism.*

*Rex datur propter Regnum, & non Regnum prop-  
ter Regem. Fortescue de Laudibus legum  
Angliæ. Cap. 37.*

L O N D O N:

Printed and Sold by *Edward Young*, at the *Angel*, near  
*Lincoln's-Inn Back-Gate*, 1714. Price One Shilling.

THE  
REVOLUTION

AND  
A  
STANDARD FORWARD

THE  
CONSTITUTION  
AND THE VICTORIES

And the Justice and Necessity of the Revolution  
and the Maintenance of the Rights of the People  
of England, Scotland, and Ireland.

By the Author of the Two Dissertations  
on the Rights of the People.

Printed by the Author, at the Revolution Press,  
No. 1, Pall Mall, London.

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# REVOLUTION

AND

## Anti-Revolution Principles

STATED, &c.

**I**T has been a General Maxim with those Abroad who envy our Happiness, as well as with those at Home who would subvert the Constitution, that no Enterprize to the Prejudice of GREAT BRITAIN can succeed while we are united, and that to destroy us 'tis Necessary to divide us; then they immediately conclude, that the Madness of Parties will carry things to any Extremity, rather than yield the least Advantage to each other: Our Historians therefore, especially since the Reformation, (which has given our Enemies a new cause of hatred) are full of the Methods they have taken to heighten our Dissensions and foment our Animosities.

But things are now in such a State, that if Men of the same Religion, of the same Communion, and under the same Obligations, to maintain the Constitution both in Church and State, do not of themselves drop their unseasonable Dissensions, they will quickly be forc'd to it: For what can our Church-Men have to wrangle about when the Church it self is destroy'd, or Freemen to contend for when Liberty it self is lost, and all that's dear to them at the Mercy of Arbitrary Power.

Our fatal Divisions make our Enemies so certain of Success, that they not only tell us that *natural Allegiance will be too hard for an Hundred Acts of Partia-*

ment, and that the Tree of Hereditary Right, tho' cut down to the Ground will grow up again, but treat us as if we were now in their Power, and menace us even in Print, as if already they had got the Gallows on their Side.

They would persuade those who don't know by what indirect Methods the Pretender's Interest has of late been advanc'd, that the Increase of *Jacobitism* is wholly owing to the Goodness of their Cause, and the Strength of their Reasons, by which they pretend to overthrow the Revolution, and to make void our Laws for want of a lawful Authority in our Legislators; and yet further with a more daring Impudence affirm, that those who have been Aiding and Assisting in bringing about, or Supporting the late Usurpation (as they call it) have forfeited their Estates and Lives; and that we have no Right to maintain our present Constitution, Laws, and Liberty, against the Person we have so often abjur'd; and that the Security of the Church of *England* and the Protestant Religion, is not of Weight enough to justify our Endeavours to support the Succession in the Protestant House of *Hanover*, tho' we have never so often Sworn to maintain it.

This is what they daily assert with Impunity in many Treasonable Libels, and this is the Sum and Substance of their Folio Book Entitled, *The Hereditary Right of the Crown of England Asserted*; which they have pompously Publish'd as the Pretender's larger Declaration, and containing his Claim to the Crown.

I shall in the following Discourse impartially State the Principles relating to Government in General, and to our own in particular, which are held by those who are for, and against the Revolution, and produce the Arguments that both Parties urge to support their Cause; and this I hope to do with such Clearness, that Men of ordinary Capacity, if they will but compare the Different Opinions set thus in View, may be able to Judge, which are most for the Honour of God, and for the good of Human Society, which best Answer the end of Government, and the Reason of its Institution, and are most fitted to our Constitution, which I shall explain and vindicate: And in doing this I shall consider every thing which looks like Argument in this Celebrated Book of *Hereditary Right*.

That

That we may fully apprehend what each Side hath to say for their Political Principles, 'tis necessary to go to the Bottom, and first to show how they are divided in their Opinions concerning the Rise of Government, and then proceed to explain their other Differences.

Those who are against our late Happy Revolution, assert that Mankind never were at Liberty to chuse either their Form of Government, or their Governors, but from the Beginning have been subject to such as had an Absolute Power given them immediately by God; and to prove that Slavery is the natural and irretrievable State of Mankind, they tell us that *Adam* was an Universal Monarch, and had an unlimited Power given him by God, over the Lives of his Wife and Children, and that his Eldest Son in the Eldest Line possessed the same Right to govern all *Adam's* Posterity.

None could imagine this Notion was started with any other Design than to ridicule the Divine Right of Kings, were it not urg'd by reverend Gentlemen with the utmost Gravity. Whatever stress they may lay on it they can't produce one Instance, of any Mortal being so whimsical as to have pretended to govern a single Cottage by Vertue of being *Adam's* Heir.

If my Reader will pardon a Serious Answer to a Scheme so Wild and Extravagant, I shall ask what can be more absurd than to suppose all *Adam's* Posterity (who for some Thousands of Years have been so spread over the Earth, that the greatest Part of them have had no Communication with one another, nor could have any such as was Necessary to make them one Body Politick) shou'd be design'd by an All-wise God, to be for ever under but one Government, and that too the very worst, viz. the Absolute Power of a single weak Man, or if God had intended this, that he should have left Mankind no way to find out who this Universal Monarch is.

All that this Excellent Doctrine can serve for is to shew, that either all the Governments in the World are unlawful, as being founded on Usurpation, or if they be lawful 'tis not owing to an immediate Divine Right, for that can't belong to *Adam's* Heir and others at the same time, but to the Consent of the Parties



Parties concern'd, who must be at Liberty to form what Provisional Governments they please, till this Mighty Monarch, whose Power reaches to all the Corners of the Earth is discover'd.

When these Gentlemen by Vertue of *Adam's* unknown Heir, can't make out that State of Slavery to which they damn Mankind, then they have Recourse to a different Supposition, which gives *Adam's* Eldest Son no more Power than his Youngest; and they maintain, that every Father had at first a Natural Right to dispose of the Lives of his Children, and that this Power now belongs to every King in as absolute a Manner; and this is what they call the Patriarchal Scheme.

Before the Flood, when there were a Number of Generations in being at the same time, what a string of Monarchs and Slaves must they suppose in every Family? since every Father must be an Absolute Monarch over his own Children, and at the same time be as Absolute a Slave to his own Father, so that the same Men were Slaves of Slaves, and yet had unlimited Monarchs for their Slaves.

If Fathers were once possess'd of Civil Power as naturally Inherent in the Fatherhood, it must belong to all Fathers, and at all times since what is Natural must be Common, and no Father could any more part with it than his Fatherhood.

But if Fatherly Power cou'd be given to the Magistrate, yet this must suppose that all Fathers till they parted with it were in a State of Equality with Respect to one another; and that every Child on the Death of his Father since Fatherly Power cou'd not survive the Father, must be in a State of Liberty till himself consented to alter that State, so that this Opinion as well as that relating to *Adam's* Heir, must contrary to the Design of the Inventors of them, found all Government on Consent.

Tho' these two Doctrines are as Inconsistent with one another as with the *English* Government, yet the Promoters of them make a Man an Atheist if he presumes to deny either of them; as tho' believing in God and believing the Lawfulness of the *British* Constitution are so opposite, that both of them can't be believ'd at the same time.

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But since neither of these Opinions tho' they may serve to perplex People (the main design of broaching them) can in the least make out any Man's right to civil Power, they are forced at last to own that the People have a Right to appoint what form of Government, and what Persons they think fit to Manage their civil Affairs under that Form, and that no Man till he is so Appointed, has any more Right than another; yet notwithstanding this, they say, That those who are so Appointed, derive their Power immediately from God.

If God gives Power only to them whom the Community appoint to Govern, and no greater Power than they designed them, this is in effect agreeing with their Adversaries who contend that the natural State of Mankind is a State of Equality or Freedom from civil Subjection, and that all Government is built on Consent.

To own as Bishop *Blackall* and other Learned Writers do, that the different forms of Government were instituted by Men, and yet to deny that Men were ever without Government is much the same thing as to say that Houses were built by Men, but yet that Men were never without Houses.

To acknowledge that no Person has a natural Right to civil Government, and yet to deny that Men by Nature are in a State of Freedom from civil Subjection, supposes them who talk thus capable of saying any thing to support their Scheme of Government. These Gentlemen have the hard task of maintaining three inconsistent Schemes, and you will not meet with a Discourse of theirs relating to Government, without having all three asserted, and all three given up; for they will no more stand to this last, than to the other two.

For when you say, that if any Power comes immediately from God, it must be the Legislative, (since the executive consists in nothing else but in putting the Will of the Legislators in act,) and that therefore, the Lords and Commons in *Great Britain*, by having two thirds of the Legislature, must have their Power as immediately from God, as the Person who has the other third, and that whosoever attempts to rob them of their Power, must be as much an enemy to the ordinance of God, as he who wou'd rob the Prince;  
This

This by no means will be allowed, no, 'tis the Prince alone (as may be seen by the late numerous Addresses and Sermons) who has his Power immediately from Heaven; and that consists in having a right to active Obedience in all things not contrary to God's Laws, and to Passive in all things whatever: Which is supposing that absolute Monarchy (since the *Grand Seigneur* can have no more Power than this) is in opposition to all other forms of Government, design'd by God, if not for all Mankind, yet for *Great Britain*: and that the Parliament in claiming a share in this supreme Power, are guilty of the highest Sacrilege, in encroaching on the divine and incommunicable Authority of the Prince.

These Men say, that the Power which the King has over the lives of the People, necessarily supposes his Authority immediately from God.

In a state of Nature, every one has a right in defence of Himself and innocent Neighbours, to take away the Life of an unjust Aggressor; but under Government the Legislators alone retain this Right: And all others, not only recede from it, but oblige themselves to assist with their Joynt-forces, and inflict those Penalties which are annex to the breach of their Laws.

And since a *British* King has no right to cause any to be put to Death, except he is found by his Peers guilty of a Crime the Legislature has made Capital, this will no more prove he has his Power immediately from God, (tho' the Power of Life and Death were so) than it will prove an Appellant in case of Murder has such a Power, since he can hang the Murderer notwithstanding the Kings Pardon.

Besides, this Argument wou'd be lost if there were no capital Punishments ordained by Parliament as in the Reigns of the *Saxon* Kings, when the estimates of lives were settl'd by them, and that of a King was valued at 30000 Thrymsæ, or, 4500 Pounds. \*

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\* *Regij capitis æstimatio jure Anglorum communis 30000 Thrymsarum constat quorum millia quindecim capitis æstimationis reliqua regni nomine debentur hæc ad gentem, illa ad cognatos pertinent. Lambertis Leges Athelstani. P. 35.*



People of ordinary Capacities by this time, may perceive how the *Anti-revolutionists* do not scruple to trump up what they themselves can't but know to be inconsistent; and that they are continually talking backward and forward about the original of Government, with a curs'd intent to make Slavery the only lawful state of Mankind, and entirely to subvert the happy *British* Constitution, and to destroy all the Rights and Privileges of their fellow Subjects.

Yet they have no way to prove their point except by supposing, that Men like Mushrooms rise out of the Earth, a few sitting on Thrones with Crowns on their Heads, and Scepters in their Hands; all others lying prostrate on the Ground, with Saddles on their Backs, Bridles in their Mouths, Chains on their Hands and Feet, and mark'd differently, that it might be discern'd to which of the crown'd Heads these Cattle belong'd.

Having shown with relation to the beginning of Government the Opinion of one Party, if they can be said to have any Opinion who do nothing but contradict themselves, I shall now settle the sentiments of the opposite side.

They say, that if no Person can produce a commission from Heaven, nor can claim from Nature a right to govern any Community, it necessarily follows, That the natural state of Mankind is a state of Freedom from all civil Subjection; and that nothing but their own Consent can put them out of this State, and consequently that all, who in any Nation have the management of their civil Affairs, must be entrusted with it by the People; and they say 'tis not possible for any to doubt of this who sees that in all Republicks and elective Monarchies, the supreme Governours wholly owe their Power to those that choose them, being but private Men till they are so chosen; and that any one may be as certain that the right which this or that Family has to reign in hereditary Monarchies is likewise deriv'd from the People, if he only considers that the first Monarch cou'd have no hereditary Right, and that if the reigning Family should be extinct, the Nation may choose any other Family with what Limitations or Restrictions they please, or else appoint a new form of Government.

To this 'tis Objected, that tho' civil Polity is a work of Contrivance, and therefore cou'd not be the natural State of those Men who first fram'd it ; yet that their descendents ever since have been born in a State of civil Subjection, being bound to that Government, and to those Laws which their Ancestors fram'd.

But if the natural state of Man was once a state of Freedom, it must always be so, for what is natural, must be common to all of the same kind at all times : And if Men had been ty'd down by what their Ancestors did, they cou'd never have made any alteration in the Government or Laws they had fram'd.

And the Truth is, all humane Laws bind only by the present Legislators Authority, whose will it is that all the Laws enacted by their Ancestors, should remain in force till they declare the contrary, and except we allow them this Power, all Laws cou'd only be alter'd or abrogated by those very Persons who made them, but when they are dead their Authority can't survive them.

The good of the Society will not permit that Men should remain so long without the benefit of those Laws which were fram'd by the Wisdom of their Ancestors, as is necessary to their being formally Debated, Voted and Enacted after the manner that Laws at first are ; and therefore all Governments will have them Obey'd untill they, as formally, repeal them, as they do the Laws made by themselves, but notwithstanding this, those Laws as much owe their Authority to them as the Laws themselves Enact.

Yet further, if all Laws tho' never so long since Enacted, did not owe their Authority to the presum'd consent of the present Legislators, they whose Ancestors by living in another Country, were never subject to the former Legislators, could not be bound by their Laws.

If there's no Law formerly Enacted, but what as much depends for its Force on the present Powers as any of their own passing, they can't receive their Authority from Laws to which they give Authority, and therefore their Legislative Authority must be deriv'd from another Original, which, where no Commission from God or Nature can be produced, must be the consent of the Parties concern'd; and therefore tho' the same  
Laws

Laws have in any Nation been continued on for Thousands of Years, yet in every Age they owe their Authority to the then Legislators; and for the same reason tho' any form of Government has been kept a foot, from Generation to Generation, yet, that form and the Persons who rule according to it owe their Authority, not to the consent of Men in former Ages, but to those of the present time, who generally have that veneration for the Wisdom of their Ancestors, as to follow the example they have set them, except they see apparent reason to change; and they who upon such a change, tho' it be never so great, are entrusted with Power by the Parties concern'd, have all the right to Govern that ever any Men had, or ever cou'd have, except where God, as among the *Jews*, immediately interposed.

'Tis said by the opposite Party, That if the natural State of Mankind be a State of Freedom from civil Subjection, and that all Men are in this State till they consent to alter it; Conquest, which being built on force, is Diametrically opposite to consent, can never give the Conqueror a right.

To this 'tis answer'd, that even when Conquest precedes, all right to Obedience is built on consent, because Conquest can do no more than dissolve the relation that was between the former Governour and his Subjects, by disabling him from giving them Protection, and them from paying him any Allegiance; but this does not give the Conqueror a right to Govern them; because to put it out of a Mans power to govern others, and to have a right to govern them himself, are very different things.

As long as the Conqueror uses those he gets into his Power otherwise than is consistent with the Nature of civil Government, they do him no injury if they refuse to obey his Commands and prefer Death to Slavery.

The relation of Governor and Govern'd, does not Commence till he receives them into his Protection, and they are willing to have recourse to him for those benefits which flow from civil Government, so that his right to Govern them depends on his readiness to protect them and their willingness to accept of his Protection, which since the Conqueror has Power to



hinder them from taking from any other, they for the sake of their own Preservation must be glad to receive from him, and in order to it, pay him, as they did their former Governour, all the obedience necessary to that end.

The great Topick by which the Enemies of the Revolution endeavour to perswade People against this Establishment of human Government on human Consent, is, that it does not carry with it a due reverence to crown'd Heads, not acknowledging that they receive their Authority from God.

To this the other side reply, that Government like every thing else which is for the good of Mankind, is from God, or in other Words, that it is God's Will, that some shou'd Rule, and others Obey. And that in order to it, he has by the law of Nature, (Government being antecedent both to the New and Old Testament, and established in numberless places, where neither was, nor is known) sufficiently empower'd Men to constitute what Forms they judg'd best, and to chuse what Persons they thought most proper to manage their Affairs according to those Forms; and they are so far from denying that these Governors have a mediate Divine Right, that they own every Subject has the same to all that he lawfully Possesses.

If this immediate divine Right belongs to every one who has sovereign Power, as it must if all sovereign Power be immediately from God, none cou'd be guilty of Rebellion where Success crown'd the Attempt; because, like Christ and his Apostles they were immediately empowered by God, and whoever oppos'd them, fought against God's immediate Commission; a most admirable Discouragement to all Rebellions!

But if all who have sovereign Power, have not by that an immediate divine Right, and yet all lawful Power is built on such a Right, this strikes at all Government, and destroys the Authority of all crown'd Heads, as well as all other Governours; since there's no one Man now upon Earth, more than another, that can shew any immediate divine Commission to Authorize him to govern in any spot of this Globe. And consequently except we allow that humane Consent (which can never give such a divine Right) is sufficient

cient for human Government, we must suppose that Men are under no ties, more than Beasts where the strongest carries it.

The Men of Revolution Principles say, 'Twere to be wish'd, that there were no Governors from the Highest to the Lowest, but who were of divine Appointment; for then the poor Subjects wou'd not be so miserably harass'd as they are in most Places, nor wou'd there be any *needy tricking* Ministers to sell their Country and to betray all who trust them.

They say that they very well know this Claim of an immediate divine Right is not an invention of the Moderns, since *Diodorus Siculus* tells us of an *Ethiopian* Kingdom bordering on *Egypt*, where the Priests made whom they pleased King, on pretence that 'twas reveal'd to them, intimately acquainted with the will of the Gods, that such a Person should be King; but the poor Man was so far from getting any thing by this divine Right, that it made him the greatest Slave in that Kingdom; for if he did not every thing those privy Counsellors of Heaven expected, they would strait send him Word that the Gods had order'd them, as their Embassadors on Earth, to let him know he had rendred himself unworthy of his Divine Character, and that it was their Pleasures that he should strait dispatch himself in order to render them an account of his Conduct, and that the Will of the immortal Gods ought not to be disputed by mortal Man; the deluded Kings, never questioning but their Holy Priests who sent them such peremptory Commands from the Gods, were fully instructed in their Will, most religiously murder'd themselves; and this Pious Cheat was carried on unsuspected, till these vile Impostors had so little wit as to give to *Ergamenes* a Man of their own Tribe this Divine Right; who, as might be expected from one acquainted with their Mysteries, instead of dispatching himself cut them to Pieces. But among other Heathen Nations, tho' their Kings frequently pretended to be descended from the Gods, yet we don't find they were so absurdly Ambitious as to claim any other than Humane Right to Human Government.

The Men of Anti-revolution Principles say, That if all the right any Governor has at one time as well  
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as another, is built on the consent of the Parties concern'd, they are at a loss to find how this Consent was given at first, and how it has been since continued.

Men no doubt quickly found they had no way to secure to themselves the Fruit of their own Industry, the Land they Till'd, the Beasts they Kill'd or Tam'd, or any thing else, that by their own Labour they had appropriated to themselves, but by uniting in Societies; and as Mankind increased, so their Necessity increased of living under the Protection of Government, and those, whom God bless'd with Wisdom by degrees, form'd such Governments as best answered the end of their Institution, their common good.

Tho' at first to form a Government, it was necessary that several shou'd expressly agree, yet where Governments are once fram'd, there Men for the most part give their Consent separately and singly, and by claiming the common Privileges of the Society, and the Protection of the Government they live under, they tacitely own themselves Members of the Society and Subject to its Government; but unthinking people not considering this, believe Men are as naturally Subjects as they are Men.

Since therefore, no Man can have protection even for his Person, or a right to be in any Country, much less enjoy any Property in it, but upon the terms of being subject to its Government, all Governors justly conclude, that not only the Natives, but all others who come into their Territories in a peaceable Manner, own themselves to be their Subjects; and therefore they treat them as such, by affording them their Protection: And the very being in a Country by the Consent of Mankind and the Laws of all Nations, is esteemed a sufficient owning of the Government of that Country; so that shou'd two Men for instance, be put ashore in any place against their Will, and there immediately Quarrel, if one falls in the Duel the Government has a right to punish the Survivor, as killing one of his Subjects.

The Revolutionists say, that Mankind whose desire of their own Good is interwoven with their being, and is the source of all their Actions, can never be suppos'd willing to change their State of natural Liberty for  
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that of Subjection, and be at all the expence necessary to support Government, but for the sake of their common Protection; and consequently they can't be presum'd to have quitted their natural Equality, or to have put themselves into the Power of any of their Fellow Creatures farther than is necessary to this End.

And this they say, all Men must be convinc'd of who do but reflect, that the very Essence of Government consists in making and executing Stated Rules, for the determining of all Civil Differences, and in doing all other Acts that tend to secure the Subjects, against all Enemies Foreign and Domestick, in the quiet Possession of their Legal Rights; and that all Allegiance is nothing else but rendring the Government, that Obedience which is necessary to enable it thus to Protect them: As for instance, the Laws made for their common security cou'd not be effectual if they were not to render a legal Obedience to the executive Power, and with their Joynt Force, oblige the Disobedient to submit to the execution of the Laws; and except People did give a part of their Property in Taxes (more or less according to the exigencies of the Government) they cou'd not be secured in the enjoyment of the rest, and the same reason may be given for all Acts of Allegiance; and in truth, it is not civil Government, but absolute Tyranny, to take away the Subjects Liberties where it does not tend to their common Good, or to employ Power to any other end, than for their Protection.

This Demonstrates that Allegiance is only due for the sake of Protection, and can be pay'd to none, who are not actually invested with the Administration of the Civil Affairs of a Nation; and that Treason which is opposite to Allegiance, and consists in Disturbing or Opposing a due Execution of the Laws can only be committed against those, who are in Possession of the Sacred Office of Government, or in other Words, that Protection and Subjection are Relatives that can't subsist apart; for which Reason 'tis a known Maxim in our Law, that *Protectio trahit Subjectionem, & subjectionio Protectionem*.

If Allegiance were not annext to the Office of Governing, a Person who was incapable of executing that Office,

Office, or had resign'd it, might have a Right to Allegiance.

That Allegiance is due only to those who administer the Civil Affairs of a Nation, is a Doctrine that's calculated for the Interest both of the Governours and Govern'd, since the first it effectually secures, as long as they protect the People, in the peaceable Possession of their Power, and cuts off all Pretences of having their Government disturb'd on the Account of Titles; and for the last, who get nothing but Ruin and Destruction by all those foolish Quarrels about the Titles of Princes, they may live in Peace and quietly enjoy all the Blessings of Government; so that they who oppose this Doctrine, did they consult their own Happiness, must wish it to be true; and what greater Argument can there be of the Truth of a Doctrine, than that it is so conducive to the good of Mankind, and in a Matter too contriv'd by them purely for their Good?

Whereas the contrary Doctrine is so Inconsistent with the Happiness of Mankind, that if it were embrac'd, it would destroy the best Part of them; since all who upon any Revolution get the Power into their Hands, would for their own Safety treat those, as their irreconcilable Enemies, who think themselves Bound by all the Ties of Conscience, how kindly soever used, to Dethrone them for the Sake of the Dispossess'd Governours or their Heirs.

Except it be in Monarchical Governments, there can be few or no Quarrels about Titles; and limited Monarchy would no doubt be the most Excellent of all Governments, were it not on the Account of those Unnatural Broils, and Civil Wars, which almost daily happen about Titles; and therefore all true Lovers of Monarchy ought to encourage a Principle, which prevents these Fatal Mischiefs.

It would be very unreasonable for any Monarch, to expect more of his Subjects than to do their best to preserve Him in the Post in which they have plac'd Him. Must they when his Government is destroy'd, and He reduc'd to a Private State, remain without any Government, and thereby subject themselves to all the Miseries of a state of Nature, and to all the Cruelties the Person in whose Power they are, will inflict on them for refusing to own him as their lawful Governour?

vernor? or must they, after they have submitted to the new Government and lived in Peace under it, involve themselves again in all the Miseries of a Civil War for no other Reason but to restore to him an Office, which, when he was no longer able to Execute, they who cou'd not subsist without Government, were oblig'd to trust in other Hands? A Prince who expects this from his *quondam* Subjects, means nothing by Government but his Private Interest, and 'tis their Happiness to have parted with him. And if the dispossest Person himself ought not to expect, that the People shou'd act thus for his Sake, no other of his Family who was never intrusted with the Government, can reasonably or lawfully Desire it.

Those who are for disturbing the Peace of the Community, upon the pretence of Title, cry out, that Right and Law ought to take Place, and that we must repent and *restore*, let the Consequence be what it will.

The good of the People is the Supreme Law, to which the Rights and Titles of a Prince as well as of any other must submit, and since nothing can be more for the Interest of Mankind, and the Happiness of all Civil Societies, than that Obedience shou'd be pay'd to the Person who is invested with the Administration of their Affairs, he must have the best Right and the most Legal Title, as built on the Supreme and Fundamental Laws of all Societies, and they who break this most Sacred Law, are the worst of Traitors and Rebels.

If Men are capable of supposing, that a Particular Person's Interest ought to stand in Competition with the Safety and Preservation of a Nation, and the very being of Humane Societies, there's no Absurdity but what such Men will easily run into: They are strangely Inconsistent with themselves, who think that the greatest Tyranny can't do so much Mischief as a Civil War, and therefore all things are to be born rather than take up Arms, and yet are daily endeavouring to run the Nation into that miserable State, on the Account of a Private Person, whom the Nation have abjur'd; and who by Nature, Education, Interest, and Religion, must prove a Perpetual and Irreconcilable Enemy.

The Reason why in an Hereditary Monarchy People prefer the next in Kindred when they think him qualify'd for Government, is to avoid those Quarrels  
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which frequently happen about Election in other Monarchies; and wou'd it not be very absurd to raise a Civil War in order to destroy the Person who actually Governs, on Pretence, that another has a better Hereditary Title, when the very end of having an Hereditary Monarchy, was in hopes that it wou'd prove a means of Preventing a Civil War?

To give a more Particular Solution; Natural Relations, as that between Father and Son, last as long as both Parties live, but those which are Artificial may be destroy'd during their Lives; and when these Relations cease, all Obligations between them must necessarily cease. The Relation between Subject and Sovereign ceases, when he either will no longer protect the Subjects, and so freely withdraws from his Government; or else, when he is depriv'd of the Power of Protecting them, and so is driven from his Government, which as to the People has the same Effect, and they are with Regard to him who can no longer protect them, in a state of Nature, and must remain in that State, if they do not pay their Allegiance to that Person, who by dissolving the Former Government, has got the sole Power of Protecting them.

The chief Occasion of these fatal Errors is the Opinion which People have, that they are oblig'd to do as much to restore the outed Person or his Heir, as they were to defend him when in the Throne; whereas the Nation when the Administration of their Publick Affairs is in other Hands, are no more concern'd for him or his Family than for other Private Men.

'Tis only the Publick which makes the Difference, and the Publick is equally concern'd that Peace shou'd be preserv'd whoever is at the Head of Affairs; and 'tis the Protection that he affords his People that makes his Character Sacred, and obliges them to esteem him as the Father of his Country, and their Earthly God.

'Tis no greater Crime considering the thing purely in its self, for the People to throw off their Allegiance to their Prince, than for him to refuse to govern them, because their Engagements are reciprocal; that which creates the Difference is, that Kings are invested with so much Power, that People can't generally Speaking refuse to obey them, without causing a great deal

deal of Mischief to the Publick, whereas a Prince may part with his Crown without any such Inconvenience.

That which makes the Crime of Rebellion of so deep a Dye is, that Rebels put it out of their Power to make Reparation to the Publick for all the Destruction and Misery which a Civil War creates; and the Endeavouring to bring the same Calamities on a Nation, can't make them amends for the Mischief of the former Commotions, since the more they have suffer'd by that, the less they can bear any new Disturbances.

The Interest of a Prince is only more Sacred than that of another Person when the publick is concern'd in his Actions; when that ceases he ceases to be a Publick Person, and is but upon equal Terms with other Private Men. And if one who is depriv'd of his Inheritance, which he had not for the sake of the Publick, but his own Private Interest, ought to sit down with his Loss, if he can't recover it without disturbing the Publick, much more ought a Person to do so when he is dispossest'd of an Office, which was Instituted purely for the good of the Community, and all the Right he had to it was in Order to serve it. And if in the first Case it be Damnation to disturb the Publick, and resist the Powers that be, it must certainly hold as strongly in the Last.

Can any Protestants be so mad as to take up Arms on such an idle Pretence? when if their Enterprize be curs'd with Success, it must infallibly destroy our Holy Church and Religion, and bring on our own Country and all *Europe* most insupportable Calamities. And how terrible must their Condition prove hereafter, who instead of being the humble Embassadors of Peace, and lowly Ministers of that Blessed Gospel, which teaches Universal Charity and Benevolence, prostitute their Character to serve the vilest Cause on Earth, and in Defiance of their frequent Oaths, become Trumpeters of Rebellion?

There may be Circumstances, wherein it may be not only Lawful but Necessary to restore an outed Family when it may be done not only without Prejudice but with Advantage to the Common wealth; as in the Case of *Charles II.* whose Restoration was brought about by the Consent of the Nation without the least



Blood-shed, and was the only Means to prevent any further Tyranny of the *Juncto* of the Officers of the Army, who instead of Protecting, had greatly oppress'd the People.

What has been here laid down is agreeable to the Sense and Practice of all Mankind, for all People even those of Anti-Revolution Principles don't think, that when they go into Foreign Countries they are oblig'd, in order to pay their Allegiance aright, to Examine into the Title of the Supreme Magistrate, or concern'd to know whether by any Revolution, either before or after their coming, the Right Heir has been driven out of the Country; but only to see who it is that is entrusted with the Power of Protecting People, and to pay him their Allegiance. And if this be all which is Necessary when Men go out of one Country into another, the Reason is the same, when Men come into a Country out of their Mother's Womb, since they ought to have as much Regard for its Peace, and as little disturb its Publick Tranquility, on Pretence that those they address to for Protection, have no Right or Title to afford it them.

If Men of Anti-Revolution Principles own, that 'tis the Duty of Foreigners to pay, during their Stay, Obedience to the Present Government, will their staying here all their Lives, and being made by Naturalization capable of all the Benefits the Natives enjoy, (which shou'd add new Ties to their Allegiance) make that Obedience, which before was a Duty become unlawful? Or if it does not, how comes that which was a Duty in all Naturaliz'd Persons, be a Crime in the Natives themselves?

But 'tis not only the Practice of Mankind to pay their Allegiance, when they go into Foreign Countries to those Princes who protect them, without concerning themselves, whether they have any other Right or Title, but what is built on their Power of Protection; but they all do the same thing in their Native Country, and therefore never scruple to pay their Allegiance to those into whose Power they fall, tho' the Chance of War makes them change Governors more than once in a Campaign.

If



If a Conqueror has never so just cause of War, all Men think it their Duty to adhere to the Person who has given this just cause as long as he retains the Power of Protecting them, and after that, they think it their Duty to transfer their Allegiance to the Conqueror, tho' he had no just Cause for making War.

And if Allegiance be due to a Conqueror for the sake of Protection, tho' to attain this Power he did the People infinite Damage, the reason will hold as strongly for a Nation to pay their Allegiance to their Deliverer and Protector, who, to preserve their Rights and Privileges, expell'd the Tyrant that wou'd have enslav'd them.

If a Foreigners or Natives injustice in dissolving the relation that was between a King and his Subjects, will not hinder the People from having a right to be Protected, must not the Person in whose Power they are, have a Right to Protect them, and can this be done without being politically United to him, as to their Head?

In all these Cases, in which the Titles of most Princes are concern'd, to separate Power and Right is to suppose Men oblig'd to live without Government; because he who has the Right to Govern, has not the Power, and to him who has the Power, and not the Right, they ought not to pay their Allegiance, without which, there can be no Government: This is Absurd, because it obliges People on pretence of a particular Man's right to Govern them, to live without any Government.

The Enemies of the Revolution, who, *good honest* Men, wou'd take the benefit of the Government, and yet be at liberty to destroy it, maintain such pernicious Principles, as make the bulk of Mankind to be under no obligation to any Government, or indeed, ever to have own'd any and the swearing part of them (who I am affraid are not the least in number) not only approve these Sentiments, but go farther and assert such Notions, as set Mankind free from all the obligations they can possibly lie under to any Government.

The *Nonjurors* have ever since the Revolution, had constant Recourse to the Government for Protection, and either this is owning it, or else the greatest part of

of Mankind (who have taken no Oaths of Allegiance) never own'd any, because, from the earliest Times, to this Day, they did nothing to shew they own'd any Government, but what the *Jacobites*, without the least Hesitation, have for these 25 Years done to the late and present Government; and if they, notwithstanding all this, think themselves bound in Conscience to Destroy it, and want but an Opportunity to fall on, how can they say that the bulk of the People were engaged to be true to King *James*, or any of our Kings before the Revolution, since they did nothing to engage their Fidelity, but what they themselves have done to the Governments they pretend to Disown?

'Tis plain, that the Creatures of the Pretender are in a state of Nature with relation to him, because they have no Recourse to him, or any Commission'd by him for Protection; and if they are not in the same State with all the World, it must be because they are Members of that Body Politick, which owns the Present Government for it's Head.

If they say, all they have done does not make them Members of this Body Politick which has taken the present Government for it's Head; then by their Principles, all Mankind must not only be in a State of Nature, but it must be Impossible for them to come out of it tho' they had sworn to own a Government, because they cou'd not fulfil that Oath, if having recourse to a Government for Protection, and doing all that was necessary to obtain it, be not owning it.

Were Men of Anti-Revolution Principles consistent with themselves, they shou'd rather suffer any thing, than have Recourse to Judges, who Act by an Authority they pretend they can't own, because they must suppose, that the putting the Sentences of such Judges in Execution must be, for want of a Lawful Commission, so many Murders, Robberies, and other acts of unjust Violence, and that they are Accessary to those Crimes when at their Request they are committed.

To say 'tis no less than Damnation for them to own that any other but the Pretender has a right to Govern them, and yet at the same time, to have the same Recourse to the present Administration, as if their *James* 3d. were on the Throne, and desire those Com-  
mission'd

mission'd by her Present Majesty, to do those things which they suppose he alone has a Right to authorize Persons to do, is in effect saying, they wou'd rather be Damn'd in the next, than want Protection in this World.

If the Government had refus'd to Protect them, and left them to the Mercy of every body, they cou'd have no Reason to complain, since 'twas only causing them to act consistently, by hindring them from doing that which by their Principles 'tis Damnation to do. This wou'd soon have destroy'd all these *Jacobitish* Notions, and quickly have made them see that the Government had the same right to their Allegiance as they had to its Protection; and that nothing could be more Monstrous, than to expect to be own'd as a Member of the Body Politick, and to receive the Advantages which belongs to it, and at the same time be willing to sacrifice the Head of it to one attainted, by the Laws of that Body of which he claim'd the Privilege to a Member.

All the swearing Anti-Revolution Men, not only agree with their Brethren in these Notions, but go farther; and think they can by virtue of certain distinctions swear to pay a King true Allegiance, and own him as Rightful and Lawful, and at the same time believe he most Unrighteously and Unlawfully possesses the Throne of a Prince, to whom they suppose, their Allegiance by the Laws of God and Man are inseparably due. And tho' they maintain that proximity of Blood, gives an indefeasible right, yet swear to a Successor that has not any such Claim, and in a Word, can coin such Distinctions as shall enable them to abjure those they wish for, and swear to those they deny.

Such Men as these, notwithstanding their pretences to Loyalty, destroy all the obligations that can possibly be given to any Government, *viz.* having recourse to a Government for Protection and Swearing to bear true Faith and Allegiance to it; tho' the last gives it no new title to their Obedience, but only strengthens that which before was due for the sake of Protection.

I shall shew from the Author of that so much fam'd Book, *Hereditary Right*, &c. how little the Government can depend on the Oaths or any other ac-  
know-



‘ knowledgements [a] of Men of these Principles; for he,  
 ‘ Tho’ he owns the House of *Lancaster* had been  
 ‘ in Possession of the Throne near sixty Years, and  
 ‘ had been frequently own’d and recogniz’d by the Sub-  
 ‘ missions and Oaths of the greatest Nobility, and e-  
 ‘ ven of those very Persons who laid Claim afterwards  
 ‘ to the Crown, yet contends that those Persons had  
 still a Right to the Crown, and that the Nation might  
 first swear to the House of *Lancaster*, and after that,  
 were oblig’d to forswear themselves for the House of  
*York*.

‘ He says that *Richard* Duke of *York*, [b] bound himself  
 ‘ by repeated Oaths and Obligations, to pay Obedi-  
 ‘ ence to *Henry* 6. as his lawful Prince, and that he  
 ‘ and his Son (afterward *Edward* 4.) were under the  
 ‘ Fidelity to *Henry* 6.

As to the rest of the Nation, he supposes, [c] they were  
 to follow the Example of the House of *York*, and there-  
 fore says, ‘ To whomsoever the rightful Heir shall think  
 ‘ to swear Allegiance, and perform the Services of a  
 ‘ dutiful Subject, I make no Question, but every pri-  
 ‘ vate Person may lawfully do the same: The Duke  
 ‘ having bound himself by repeated Oaths and Obliga-  
 ‘ tions, to pay Obedience to *Henry* VI. as his lawful  
 ‘ Prince, who could reasonably be a *Non-juror* after such  
 ‘ an Example.

But we shall now see, that these Bonds are but meer  
 Cobwebs to a Man of Anti-Revolution Principles; for  
 he says, That the Peoples Oaths being [d] against mani-  
 fest Right could have no Obligation, when the Duke  
 of *York*’s Claim to the Crown was made publick.

And to shew, that the Duke had still a manifest Right  
 to the Crown, this subtile Casuist urges two Argu-  
 ments; First, that his Oaths did not amount to a part-  
 ing with, but only not insisting on his Right, and there-  
 fore he was at Liberty to claim the Kingdom, and illu-  
 strates this, by saying, [e] ‘ If a private Subject swears  
 ‘ to one who wrongfully disseizes him of his Right, the  
 ‘ Law will put him in Possession notwithstanding his  
 ‘ Oath; but if *Richard*’s Oaths did amount to no more  
 than this, ’tis impossible to invent Words, whereby a

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[a] p. 102. [b] p. 96. [c] p. 95. [d] 97. [e] p. 99.

Man can part with his Right, and all Oaths of Allegiance may be after this Manner eluded ; let Men swear never so often, and in the fullest Terms possible, 'tis but saying, they did not part with their natural Right of Non-subjection, but only declar'd, they would not insist on it ; but that when they did, the King had no farther Right to their Allegiance, tho' they had bound themselves, as he says the Duke of York had, *by the strictest Ties and Engagements of Fidelity, by repeated Oaths and Obligations.*

\* His Second Argument is inconsistent with the First, that these Oaths of the Duke would have amounted to a Resignation of his Right, had they been made in due Form and Manner. 'Twas, says he, † never doubted, 'but that Princes might part 'with their Rights as well as common Subjects, and 'prefer a private Life before the Burthen of a Crown ; 'and that such Resignations may be made, either by 'direct and expresse Terms, or by Actions which sufficiently imply them. It's true, in the Judgment given 'in the House of Peers, upon the Claim of *Richard Duke of York*, it was declar'd that Resignations 'without Consent of Parliament did not oblige the 'Makers of them ; but this seem'd the first Time, when 'this Doctrine was publickly establish'd. In all former 'Surrenders by the right Heirs, it does not appear, 'that their Validity was ever question'd, tho' not perform'd in the great Council of the Kingdom.

But if all Surrenders were unquestionable, that were made before this pretended Judgment, that of the Duke of York's must be so, since made many Years before it ; and Omnipotency it self can't make that not to have been Valid, which has been Valid.

And tho' this Author pretends, that it was the Judgment of the Peers, that the Duke of York's Oaths did not amount to a legal Resignation, because not done in Parliament, and with their Approbation, yet in the whole Proceedings of this Matter which he has printed, from the Parliament Rolls we do not find the least Mention of any such thing, either by the Parliament, or the Duke himself ; in this tender Point, all he had to say, was, *That no Oath ought to be perform'd, when it leadeth to the Suppression of Truth and Justice ; that he was ready to prove before any Judge Spiritual, that neither he nor the Peers were bound by their Oaths.* D Nor

Nor do the Peers agree with this Author, in supposing that they were not bound by their Oaths; on the contrary, they make those the Foundation of the Judgment they gave between the King and Duke; and therefore say, That *their Oaths made to the King at Coventry, and other Places, be sav'd, and their Consciences clear'd*; they are for owning no King but *Henry VI.* during his Life, and that *Richard* should succeed him: And tho' they declare the Duke's Title could not be defeated, without shewing the least Reason why it was not defeated by what he had done, yet they themselves are for defeating it during the Reign of *Henry*; and when they were more at Liberty to explain themselves, they evidently shew'd, they only meant, his Title could not be defeated, while his Army was victorious; for as soon as that was defeated by the Loyal *English*, who joyn'd the Queen, *He was attainted (tho' Dead) as a Traytor.*

The Three *Henrys* being at least sixty Years in Possession of the Crown, the House of *York* must frequently in all that Time have taken in Parliament, as well as out of it, those Oaths which were enacted by their Authority to oblige all the Subjects to bear true Allegiance, and consequently they in Parliament, and by the Consent of Parliament own'd the *Henrys* as their lawful Kings; but if *Richard* Duke of *York*, by frequently taking these Oaths of Fidelity did not in due Form part with his Right, \* this Author himself tells us, from a Passage which he quotes out of the Chief Justice *Fortescues's* Defence of the Title of the House of *Lancaster*, that *Richard* in Parliament freely, under his Hand, Seal, and Signet, own'd *Henry VI.* as Supreme Lord and King of *England, &c.* and that his owning him as such, is entred on Record in full Parliament; and that then by the Authority of the Parliament, the Office of Protector and Defender of the Kingdom, during the King's Sickness, was confer'd on him; and either this must, or else nothing can be parting with his Right, and owning himself by the Approbation, Consent, Concurrence, and Authority of Parliament, the King's Subject.

This Author says, 'That *Richard's* Oath of Fealty 'was † no indispensable Renunciation of his Right, according to the received Law and Doctrine of 'those Times, because it was extorted by unjust Terror, and made by him *pro Vita & Rebus servandis.*

\* Appendix N. 1.

† p. 98.

' Man.



‘Mankind in all Ages, says he, hath had a Horror of  
 ‘Violence and Usurpation, as destructive of Society,  
 ‘and hath agreed to render the Effects of them null and  
 ‘invalid; not Princes only, but all other Sorts of Men  
 ‘have always thought themselves free from the Obliga-  
 ‘tions of Oaths attended with enormous Læſion, and  
 ‘extorted by Fear of looſing Liberty and Life. And  
 after this Harangue, wou’d any have thought, the fre-  
 quent Oaths, the Duke took, were only for gaining, as  
 himſelf has ſhewn, the beſt Poſts; viz. the Regency of  
*France*, (which he long enjoy’d) the Lieutenantcy of  
*Ireland*, and the Governing of this Kingdom, during  
 the King’s Sickneſs, by Means of which high Poſts, he  
 gain’d ſo many Dependants as enabled him to ſeize on the  
 poor King. Thus the Reader may ſee what Oaths  
 they are, which a *Jacobite* ſuppoſes to be extorted by  
 unjuſt Terror.

And now I think the Reader muſt ſee, the Anti-Re-  
 volutioniſts by ſuppoſing no Perſon has a Right to Go-  
 vern, but he who has a Divine Commiſſion, make all  
 Governments in the World founded on Usurpation, and  
 that in order to receive Protection, and yet be at Liberty  
 to deſtroy the Government which affords it them, they  
 maintain ſuch Notions as ſet Men looſe from all the  
 obligation that they can give, either by their Actions  
 or Oaths for their fidelity to any Governor; and that  
 the Revolutioniſts on the contrary, aſſert nothing but  
 what is for the good and happineſs of Humane Soci-  
 eties, and answers the end and institution of Govern-  
 ment, particularly in maintaining it to be their indiſ-  
 penſible duty, to pay their Allegiance where they re-  
 ceive Protection, and to defend them againſt all *Pre-  
 tenders* whatever.

The Anti-Revolutioniſts, tho’ they will not allow  
 that obedience is due on the account of Protection,  
 yet maintain that whoſoever gets poſſeſſion of a Go-  
 vernment gets thereby, if there are none in being near-  
 er related to a former Poſſeſſor, an unalienable Right  
 to himſelf and Heirs; and that ’tis the duty of all  
 good Churchmen, and all Loyal Subjects notwithſtand-  
 ing they have received protection from other Gover-  
 nors, nay, have ſworn Allegiance to them, and abjur’d  
 the Heirs of the former Poſſeſſor, to watch all oppor-  
 tunities (tho’ never ſo many fatal conſequences attend

the Attempt) to restore the right Heir ; the proving of this is what the Anti-Revolutionists aim at in all their Writings, and this is the whole business of the Book of Hereditary Right, &c.

Not to take notice how inconsistent this is with their other Principles, all that I wou'd here desire to know of them, is how Possession can give any a right to govern a generation of Men, when neither he nor the person he claims from were ever in possession of their Government, but have always been govern'd by other Persons, and who, if possession gives a Right, must have the same Right to govern them as any cou'd have to govern a former Generation ; and therefore 'tis strangely Absurd, for these Men upon their own Principles to suppose 'tis the peoples Duty to eject the Person that is in possession of Power over the present Generation, for the sake of one who was never possess'd of their Government, only because one of his Ancestors were in possession of Power over Men of a former Age.

I wou'd be glad to know how these Gentlemen can own that conquest (which consists in removing by force one who is in Possession) can destroy that unalienable Right, that the Heirs of a former Possessor are suppos'd to have, and give it to their present Possessor and his Heirs.

I should be willing likewise to be inform'd how by these Principles a Monarchy cou'd be erected where a Republick had once lawfully been establish'd ; because in a popular Government, there always will be such who must have the same Right to succeed their immediate Predecessors, as any Heir of a Monarch cou'd have to inherit after him.

If these Gentlemen had maintain'd that, by all Laws whatever, Possession gives a right till a Man can be legally dispossest'd, and that therefore the Supreme Powers as having no Superior Judge, cou'd never be Legally or Judicially dispossest'd, and that it was contrary to the nature of Government to have recourse to the Sword for the Determination of any Legal Right since that dissolves the Government and puts an end to all legal Rights ; if these Men had, I say, allow'd this privilege to the Supreme Powers by vertue of possession, every one must have come into it ; but to build

build a right on Possession and then give it, for those who were never in Possession, against the present Possessors is agreeable to their usual way of reasoning.

But this Loyal Principle, as 'tis term'd, is not more absurd than destructive to Human Societies, and can serve to no other use, than to render Men Traitors, and Rebels to the Princes they live under, because 'tis morally impossible, considering the frequency of Revolutions, but that in every Kingdom, there may be one Person at least nearer akin to some former lawful Possessor, than the present Prince; and if these Men discover any such, they are bound by their Principles to endeavour for his sake, not only to destroy the Settlement of the Succession made to his Prejudice, but to overthrow the present Government tho' never so happily Administrated, and the Prince never so much a father of his Country, and the Attempt likely to be attended with the extirpation of the true Religion and the utter destroying of all the Freedom that's left among Nations.

Men of these Principles, may be oblig'd, let them live where they Will, to be from Age to Age Enemies to the Princes, by whom they are Protected; and if there happen to be a place where they do not suppose themselves to be under this Obligation, it must be wholly owing to their Ignorance, in not having a compleat List of the Heirs of those Princes, who from time to time, have been dispossessed of their Governments; nay, 'tis Probable, that never since *Nimrod*, the sixth Son of *Chus*, the Son of *Noah's* youngest Son the accursed *Ham*, contrary to all Hereditary Right, possess'd himself of the *Kingdom*, no Government according to these mens Principles has had a just Title.

*Great Britain* by reason of its situation, is not subject to so many Revolutions, as places on the continent, some of which change Governours more than once in a Campaign, and yet how few Governments are there, since we have had any tolerable account of things, that Men of these Principles cou'd have own'd either in *England* or *Scotland*? but of this more hereafter.

I shall now only observe, that we need not go further back than the Revolution, to see the pernicious



ous Consequences of this so much boasted Principle of Loyalty, since to it was owing all the wicked Methods which were taken to weaken the Hands of the Government, and to render all its Attempts against the Common Enemy ineffectual, to it we are indebted for the Assassination Plot and all other Conspiracies ; it was by Vertue of it that the Traitors, who gloried in their Wickedness, were absolv'd at the Gallows ; and had it not been for this Rebellious Doctrine, there had not been a Protestant in the Nation, but wou'd have been a Loyal Subject to the Late and Present Government, and Zealous for the Succession as Establish'd by Law, to the utter Confusion of the Papists and their Popish Pretender.

And since Her Majesty did not ascend the Throne on the Death of Her Father but of the late King of Glorious Memory ; and that Her Reign is not dated according to the nearness of Blood but to the Act of Settlement, and that these Men say, that every one in Law is presum'd to be the Child of the Parents who own'd him ; I say considering this, 'tis impossible but that they, without Renouncing their treasonable Principles, must of course be Enemies to Her Majesty's Title and Government.

This Principle must oblige all its Votaries, in Opposition to their Oaths, to do their utmost to hinder the House of *Hanover* from succeeding to the Crown ; and tho' they cou'd not prevent it, yet to continue Enemies to their Government to the end of the World, in case any of the Popish Families who are nearer allied to King *James* Survive so long.

Must not every one who is not wilfully Blind plainly See, except this curs'd Rebellious Principle is treated as it deserves, the Nation is in great Danger, and God knows how soon, of being made a miserable Scene of Blood and Desolation, and of falling into the Hands of enrag'd biggotted Men, who are bound by all the Motives which incite to Cruelty, to use us with the utmost Inhumanity.

I need add no more in so plain a Matter to convince Men, that nothing but endless Confusion can be expected, if People are not bound to pay their Allegiance to those by whose Protection they enjoy their Lives, Liberties and Properties, and to defend them

in

in the Execution of their Holy Office against all *Pre-tenders* whatever.

To suppose God requires Men on Pain of Damnation to pay Obedience where 'tis due, and yet has made it impossible for the greatest Part of them to discover where 'tis due, is the highest Reflection on the Wisdom and Goodness of God; the Bulk of the People very well know who they are that make and execute the Laws, and by whose Protection they are secur'd in the Enjoyment of their Lives, Liberties and Properties. And if Obedience be not due to those who thus protect them, but the Rule for their Obedience depends on Titles, and they are to look out to see whether there's no one nearer a Kin to the first Monarch, or to any other who was once lawfully possess'd of the Government; must not this at the best fill their Heads with eternal Scruples, and make them pay their Allegiance with a doubtful and distracted Conscience? Are they knowing enough in the Histories of Former Times, or well enough vers'd in the Laws Relating to Contracts and Divorces; or can they Judge of the Lawfulness of Conquest, the Validity of Wills, or whether the Cessions of the Right Heirs are made with due Formalities, and an Hundred other things which the Author of *Hereditary Right*, and other Anti-Revolutionists suppos'd, necessary for the Judging about the Titles of Princes?

Are any but Men bred to the Laws Competent Judges of the Titles that concern Private Estates, and are not these relating to Kingdoms infinitely more perplex'd by Mercenary Writers? Since Men in Power can find People ready to do what they will with *Records*, or Swear whatever they have a mind to relating to Wills, Cessions, and at the same time fright others from Discovering what they know.

Will Men of these Principles say, that the poor Peasants in *France*, are to Examine whether the House of *Austria* is Descended from *Pharamond*, or that of *Lorain* from *Pepin*, to see whether either of them have a better Title to the Kingdom of *France*, than the Present Possessor Descended from *Hugh Capet*? Or that they are bound to enquire into the Validity of the *Sâliek* Law, to see whether they ought not to transf-

fer

fer their Allegiance either to the Queen, or to the *Chevalier*.

If the Men of Anti-Revolution Principles say this is carrying Matters too far back ; I defie them to avoid it, except by maintaining such Principles as will prove that the *Pretender*, tho' allow'd to be King *James's* Son, has no more Right to the Kingdom than the Posterity of the First King of our Island after the *Romans* left it, or the Descendants of those *Danish* Kings who Conquer'd *England* ; and 'tis but lately the Kings of *Denmark* have left *England* out of their Titles.

And I defie these Men to shew any Reason, why the Laws made against the *Pretender*, and for the Succession in the House of *Hanover* are void, which will not equally make void all which is done since the Conquest, for Excluding the Heirs of *Edgar Atheling*.

And if, as the Author of *Hereditary Right*, supposes the Laws made in Favour of the House of *Lancaster* were all void, tho' the Nation, those that had any Pretence to the Crown as well as others, had acknowleg'd their Right for Threescore Years together, there can be no Reason why Laws made for so many Hundred Years must not be void, and so much our Author owns by saying ; \* 'tis a sure rule in this Case, *nullum Tempus occurrit Regi*, And adds, no length of time makes that Lawful which was so from the Beginning ; if there be a right Heir that claims or wou'd claim, or want either notice of his Title or Power to make it Good, or forbears to claim for other sufficient Reasons, here Prescription signifies nothing.

The People since the Revolution (as they always did before it, and if they will have any Government must always do) have paid their Allegiance to those by whose Protection they have subsisted ; now this Author to make it appear plainly to their Capacities, that they have been all this time abominably in the Wrong, and in order to inform their Judgments aright, refers them to certain *MSS.* some of which he says are taken out of what he calls *Biblioth. Harley*.



some are MSS. of Judge *Hales*, (which, tho' this Author is so happy as to have the Liberty to transcribe, yet my Lord Chief Justice *Holt* cou'd but once, and that with great Difficulty, obtain a Sight of them, without being permitted to transcribe a Word) and others he says are taken from the rolls of Parliament. He might as well send the People to *China*, or *Japan*, to learn whom they are to obey in *England*, as to those MSS. or to those old Authors he quotes, which are not only very scarce but in very bad *Latin*, and being generally the Work of Monks, who were very notorious for having no regard to Truth, are full of endless Contradiction.

How few have Leisure and Abilities to examine into the Authors he mentions, to see whether they are fairly quoted, and what, upon the whole, their Sense is, and then compare them with those who give a different Account, and from the Rules of Criticism endeavour to form a right Judgment? And, after this is done, they will find that even in those Days, most of the Writers made it their Business to flatter the Men in Power, and to put the fairest Glosses on the foulest Actions, and scandalously misrepresent those the great Men had a mind to Blacken, or in other Words, there were then your *Examiners*, *Post-Boys*, *Conduct of Allies*, &c.

This Author I think was very unkind to oblige People to take so much Pains, when in effect he owns 'tis to no Purpose, in saying this \* *Controversie is not to be determin'd by Facts and Precedents; and that 'tis certain, Injustice, Publick and Private, has more Precedents, and fills History more than Right and Justice*, and consequently 'tis not Facts, but Principles plain to ordinary Capacities, that must be the Rule to the bulk of Mankind.

There's nothing fills me more with Indignation, than to see the plainest Things (such as the common Duties of the most Ignorant) industriously render'd most obscure and perplex'd, and that too by those Men whose Business 'tis to explain to the common Capacities every thing that is not plain.

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\* *Introduç.* p. 16.

But to take off so great a Reflection on the Dictates of infinite Wisdom, as that Mankind shou'd be left in the Dark to grope their Way, in a thing on which their Happiness here and hereafter depends; I shall shew that the Directions, our Holy Religion gives us are in this Case so plain, and the Reasons on which they are grounded so Evident, that every one who is not willully blind must needs see his Duty.

The Question the *Jews* put our Saviour, was, whether it was lawful to pay Tribute to *Cesar* or not; they very well knew that they had been oblig'd by God himself to take a King from among their Brethren, \* that the House of *David* had a Divine Commission to rule them for ever, and that the *Romans* contrary to all Justice had brought them in Subjection, as *Cesar* himself had the *Romans*; and therefore no doubt they expected a favourable Answer, for the House of *David*, from *Jesus* who was himself of that House; but he, without any Regard to those Laws which made for the House of *David*, seeing the Image and Superscription of the Money which went by Publick Authority in the Country, and which denoted who was in Possession of the Government, determin'd it for *Cesar*, saying *render to Cæsar, &c.* And if none are so Ignorant as to know who is in Possession of the Government, none can, if our Saviour's Rule is to be follow'd, mistake the Person to whom their Allegiance is due. *St. Paul* declares that all who have the actual Administration of Government are from God; this he twice repeats in saying, *there is no Power but of God; the Powers that be are ordain'd of God.* † Cou'd his Words have been construed to extend to those who have the Title and not the Power, it cou'd not have taken off the Scruples of the *Jewish* Converts at *Rome*, who lay under the same Prejudice with the Unbelieving *Jews*; and the Reasons he gives why they are of God, shew he can't mean it of any out of Possession, or not actually invested with the Power of the Sword; It is to those *who bear the Sword and that not in Vain; it is to all those who are a Terror not to good Works but to evil, those that reward them that do good. If thou art good he is a Minister of God to thee for good; if thou art evil he is still a Mini-*

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\* *Deut.* 17. 14, 15. † *Rom.* 13. 1.

ster of God to thee, because he is a Revenger to execute Wrath upon him that does evil; and since he is such who protects the Good, and punishes the Evil, you must needs be subject not only for Wrath but Conscience Sake; for this Cause pay you Tribute also, for they are God's Ministers attending continually for this very thing. So that the Reason which is given for Obedience, shews, 'tis impossible to belong to any in the Circumstances of the Gentleman at *Bar Le Duc*, tho' he had infinitely a better Title than he has, and as clear as that of the House of *David*.

The same Apostle says, *That \* Prayers should be made for Kings, and all in Authority, that we may lead a peaceable Life in all Godliness and Honesty.* But the *Anti-Revolutionists* are for destroying our Peace and Quiet, for on whose Principles are inconsistent with all Honesty, as well as Godliness.; so that the Honour of God, as well as the Good of Man, which are the two grand Rules, (to which all particular Laws either of God or Man, if they should chance to interfere, must give Place) obliges us to do our utmost to support the present Powers, and the Laws they have enacted relating to the Protestant Succession.

The Rules, the Scripture lays down relating to our Obedience, are exactly agreeable to the Practice of *David*, who, when he was with the King of *Gath*, thought it his Duty, for the Protection he received, to joyn with the uncircumcis'd Idolatrous *Philistines* against his own Brethren, Men of his own Religion, and God's peculiar People, even tho' the Lord's Anointed was at the Head of them; and when he found his Service would not be accepted, he humbly expostulates in these Words, † *What hast thou found in thy Servant as long as I have been with thee, that I may not go up and fight against the Enemies of my Lord the King?*

Had the *Philistines* given him the same Protection in *Judea*, it had been his Duty there to have joyn'd with them against all Persons whomsoever, and accordingly the Jewish Nation paid their Allegiance to the *Romans*, *Gracians*, *Persians*, *Chaldeans*, &c. and own'd them the lawful and rightful Governours of *Judea*.

Can any impartial Man, who considers these Texts, tho' there are many more as clear, say, that the Scrip-

† 1 Tim. 2.

† 1 Sam. 29. 8.



ture has not plainly inform'd the most ignorant, to whom their Allegiance is due, as well as for what it is due?

After this, Can any one make it a Question, whether the Obedience due to Government be due to the Person who actually governs, or to one who is under a moral Incapacity to exercise any one Act of Government ?

Another Difference between the *Anti-Revolutionist* and *Revolutionist* is, that the former maintain, that the People, when under a Government with a lawful Title, are bound on Pain of Damnation to suffer their Liberties, Properties, nay, their very Lives, to be taken from them, rather than resist.

The latter on the contrary affirm, That a Prince may be guilty of such Acts as are inconsistent with the Nature of civil Polity, and amount to an abdicating his Government, and putting himself into a State of War, with those whom, by his regal Office, he was bound to govern and protect.

And they say, if the Doctrine of absolute Non-resistance was believed, it would inevitably place all Mankind in a worse Condition than they are any where at present in, because the greatest Tyrants are under some Restraints, and kept within some Bounds, lest their Slaves should grow desperate.

Man, as Experience shews, has the strongest, the most violent, and most irregular Appetites ; and that which hinders him from giving them the utmost Loose, is, that he, being a poor dependent Creature, who can't subsist without the Help of others, is very often forced to comply with the Rule of *doing unto others as he would be done unto* ; but could such an Animal be free'd from all Apprehensions of Danger, and that all his Subjects would either comply with all his extravagant Commands, or else timely suffer their Throats to be cut ; 'tis scarce to be imagined, what a fierce Monster he would grow, and how like a Devil incarnate he would act.

There's no Hardships such a Prince would scruple to impose on the poor People, to gratifie his own or his Minion's most extravagant Lusts : Men then would be in a worse Condition than inferior Animals, because there are a thousand Things they do to provoke one another,

other, which other Animals are not capable of, or else, on the Account of their Want of Reason, are not resented.

We no where find, that a Prince ever gave up all the Dogs or Horses in a Country, because his Favourite was either bit or kick'd by one of them, as the whole *Jewish* Nation was given up by King *Ahasuerus* to his Minion, who was resolved to sacrifice both Old and Young, Women and Children, to his Resentment, because he thought one of that Nation fail'd in his Respect to him ; nor was the Matter much mended, when the King, to gratifie a Woman, made such a Decree in Favour of the *Jews*, that by Virtue of it they murdered 75000 of his other Subjects.

If *Nebuchadnezzar*, when this admirable Doctrine, as we see by his being turn'd a Grazing by his Subjects, did not prevail, was for putting the *Chaldeans* and Wise Men to Death, because they knew not his Dream ; There can be no Doubt, but Princes, if they could be fully satisfy'd, they might without any Hazard use their Subjects as they pleas'd, would destroy the best and wisest of them for as foolish Reasons : Then they need not, like *Caligula*, wish, that their Subjects had but one Neck, since a few *Russians*, arm'd with the Prince's irresistible Authority, might quickly dispatch Millions.

Then Princes, who usually see with their Favourites Eyes, and hear with their Ears, would be easily induc'd to give up whole Provinces to the worst of Men, who being in haste to grow rich, and not willing to lose so precious an Opportunity, would plunder the Inhabitants at such a Rate, as would not leave them enough to subsist on.

In short, by the continued flattery of some, and the slavish submission of all, things by degrees would be brought to such a Pass, that the cruelest Tyrants that ever yet have been, would be thought gentle and merciful Governors, in comparison of the best that then could be expected, and the extirpation of the greatest part of Mankind wou'd unavoidably follow ; and those who dar'd not to put an end to their Misery and life at the same time, would fly to Deserts, Woods, Mountains, and other inaccessible places, to hide them from the fury and cruelty of their Tyrants, who would

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as the *Spaniards* did the *Indians*, hunt their subjects for Sport, and feed their Dogs with them.

In short, when Men can be perswaded that the interest of one Man, is to be preferr'd to Millions, and that all Mankind, except a few Sovereigns, are born in a state of irretrievable Slavery, and disarm'd of all that defence, which nature allows other Animals, they will easily believe, that their Governors are superiour Beings for whose pleasure they were made; and indeed, to believe that men's Persons as well as Properties, are absolutely at the disposal of any being, but one infinitely wise, good and powerful, is Idolizing the fellow Creature, and paying him that Honour which is due to God alone.

And if Tyrants of old, when this doctrine was so far from prevailing that numbers of them were cut off for their cruelty, would not be content to be deified after they were dead (for that was allow'd them by common consent) but must, during their lives, be adored as Gods, and have divine Honours pay'd them; can we reasonably suppose they will be content with less, when they see every thing in this World depend on their Breath? Then in all probability, those who presum'd to offer up any Prayer, except to their Prince, would like *Daniel* be thrown to the Lions, or into the Fire like the three Children; and if the King of *Babylon* cou'd think it a just cause of making War, that all the Nations shou'd worship him only, and that all Tongues and Tribes, should call on him as God, the great quarrel among Princes, when they had got this god-like Power, wou'd be, who shou'd be the greatest God, and have the most Adorers.

And none can doubt of this, who considers that the nature of Man is so Ambitious, and Restless, that it is always aiming at something further, than at present it enjoys, and consequently they who are arrived at the utmost pitch of Humane Greatness, will not easily be satisfied without being thought more than Humane. Hence it was, that even the Christian Emperors took on them the titles of *Numen*, *Divinitas*, &c. and we have an *Immortal Mortal*, who, notwithstanding all his Bigottry, scruples not to have Incense burnt before his Statue.



In such a dismal state of Darkneſs, equal to the Miſery and Poverty Men will then lie under, nothing will be too groſs for them to ſwallow: 'Tis impoſſible then, that they ſhould have any notions of God, or his Attributes that are worthy of him, but eccleſiaſtical Tyranny will be as boundleſs as Civil.

The bleſſed Condition, and happy ſtate, in which the *Anti-Revolutioniſts* place Mankind, is either murdering one another about who has the beſt *Title* to enſlave them, or, when that is ſettled, ſubmitting to all the moſt cruel and barbarous uſage that Tyranny can make them ſuffer.

'Tis no wonder, if infidelity, as theſe Men pretend, increaſes; for I deſy them to put a better Argument in the mouth of unbelievers, than making the Scriptures to teach, that all the choice, an infinite good Father has left his Children, is either to be as wretched and miſerable here, as the moſt inſupportable ſtate of Slavery can render them, or elſe for not ſubmitting to it *here*, to be damn'd *hereafter*.

What thanks ought a Nation, the freeeſt in the World, to pay thoſe Mercenary Preachers, who, as tho' all the Texts in the Bible taught no other Doctrine, are continually labouring with all their Rhetorick, to perſwade them to change this bleſſed Condition, for ſuch a ſtate of Oppreſſion and Thralldom, as a free People can ſcarce frame an Idea of? and which muſt unavoidably happen if by our fatal Diviſions, a certain Monarch can impoſe his *Creature* upon us.

The *Anti-Revolutioniſts* maintain, that a patient Submiſſion to the greateſt Tyranny will not deſtroy as many Lives as Reſiſtance, and that therefore the Doctrine of Non-Reſiſtance, is for the good of Mankind.

This indeed, is the beſt thing that can be ſaid, for thoſe who have done their utmoſt to bring an univerſal Bondage on *Europe*; but Life it ſelf is no Bleſſing, when one is uncertain whether he ſhall not the next moment be depriv'd of it, or what is neceſſary to ſupport it, his *all* lying at the mercy of a Tyrant, and his rapacious Inſtruments; and the more he has, the the greater muſt be his Fear, there being no known Laws, by obſerving of which he can be ſecure; and innocence, vertue or any good qualities whatever, are  
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so far from making a Man safe under arbitrary Power, that they become a state crime, and mark him out for Sacrifice.

'Tis notoriously false, that defending Liberty, destroys more lives than submitting to Tyranny; since those Nations, who have preserv'd their Freedom, notwithstanding the Blood and Treasure it has cost them, are Populous as well as rich, abound with all the conveniencies as well as necessities of life, have not only the useful Arts and Sciences in perfection, but those which serve for Pleasure and Luxury; and tho' they are plac'd in never so barren a Soil, and have never so many natural inconveniencies to struggle with, they know how to make Nature submit to Art.

On the contrary in enslav'd Countries, all worthy Ambition to excell in arts, all disposition to Industry, Justice, or Virtue, all goodness of Nature is perfectly extinguished, and the Inhabitants become Base, Cowardly, and Ignorant, and the Country it self depopulated, as if by Plague or Famine:

And this can't be otherwise, since the uncertainty of Property discourages all Cultivation, for which reason the greatest part of the Inhabitants perish for want of necessities, and the few who remain, (as one may see by their Meagre looks, their Rags, their Nastiness) are destitute of every thing that makes life comfortable, and they who with so much difficulty subsist singly, lie under no great temptation of encreasing that difficulty by having Wives and Children to maintain.

Whoever compares the Countries who have preserv'd their Liberties with such as are enslav'd, or the same country with it self under these different Circumstances, will see the one in all respects, so much below the other, that he must be convinced, nature does not make a greater difference between Man and Beast, than Government does between Freemen and Slaves.

But as to number of Inhabitants, the thing we are chiefly now to examine into, all History will inform us, that the difference is almost incredible: '*Machiavel* \* Reports, that the city of *Florence*, alone, with the '*Val d'Amo* a small Territory belonging to it, cou'd in

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\* Hist. of *Florence*

a few Hours, by the sound of a Bell, bring together 135000 well arm'd Men; whereas now that City, with all the others in that Province, \* are brought to that despicable Weakness, that they can neither resist the Oppression of their own Prince, nor defend him or themselves if they were assaulted by a Foreign Enemy: and this is not the effect of War or Pestilence; they enjoy'd a perfect Peace, and suffered no other Plague than that of Arbitrary Government, which in less than 150 Years, is thought to have destroyed Nine Parts in Ten of the People of that Province. The *Spaniards* have done the same in the Kingdoms of *Spain*, *Sicily*, *Naples*, the *West-Indies*, and other Places. And Pope *Alexander VII.* is said, by one sordid Cheat upon the Sale of Corn, to have destroy'd in Eight Years, above a Third Part of the People in the Ecclesiastical State.

In *Greece*, and the Free States of *Asia*, particularly in *Judea*, the Inhabitants were a Hundred to one what they are at Present, notwithstanding the continual Wars they then were in, and the long Peace they have since enjoy'd, under the Despotick Power of the *Turkish* Emperors. And those *Northern* Nations, from whom formerly flow'd such a Torrent of People, as over-spread these Parts of the World, are now by reason of Arbitrary Government, become almost destitute of Inhabitants; whereas the Barren Mountains of *Switzerland* are full of People, tho' there are few Wars in *Europe*, but where they are employ'd on both Sides.

The Strength and Riches of two such small Spots of the Globe, as *England* and *Holland*, had been incredible, if the World was not convinc'd of it by what both have done during this long War; but shou'd the Former be reduc'd under Arbitrary Power, it wou'd in a few Years lose above Two-thirds of its Inhabitants, and all its Trade and Riches; and the Latter, now the wonder of the World, would by Tyranny quickly be reduc'd to the same miserable Condition, as it was when under the *Spanish* Yoke.

If Mankind can't be in any Circumstances, but what must be attended with some Inconveniencies, those

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\* Sidney of Govern. p. 186. 187.



which have the fewest ought to be preferr'd ; and if Slavery be the greatest Curse that can befall a Nation, every thing ought to be hazarded, rather than that shou'd be submitted to ; a War undertaken on the Account of Liberty, if it prove successful, may be compar'd to a Fever, which, tho' smart for a time, yet being well cur'd, renders the Patient more Strong and Healthy ; but Arbitrary Power, like a Consumption preys, on the Vitals, and reduces the Commonwealth to a meer Skeleton : And as things now stand, 'tis morally impossible for oppress'd Subjects, considering the present way of making War, to recover their Liberties ; because they can't bear such prodigious Expences as are necessary for taking those Fortifications, which are built for bridling them ; so that if Men are now once enslav'd, they have no hopes of being Free, but every Age will add new Oppressions, and new Burdens, to a People already exhausted.

'Tis usually said, if the People shou'd be allow'd to judge in their own Cause, and to have recourse to Arms, when they imagine they are oppress'd, that they, such is their gross Ignorance and Stupidity, might easily be work'd on by designing Men to have recourse to Arms, tho' their Liberties were never so Safe.

But this Objection is made by the *Anti-Revolutionists* with very a ill Grace, since they suppose the People have sufficient Understanding, to judge concerning the Titles of Princes, which, considering the foot they put them on, is the most difficult thing in the World ; whereas, if they have not lost their sense of Feeling they are very capable of Judging beteen Protection and Oppression.

If the Power the Magistrate has be not a trust given him on Condition, that he employ it for the publick Good, then if he uses it never so madly or maliciously, they have no Reason to complain of his abusing his Power, or betraying his Trust, since they gave themselves up absolutely to him without any Conditions, either Explicite or Implicite. If this be infinitely absurd, then Government must unavoidably be a Trust, and they who depute any to execute this Trust, can't but reserve to themselves a power to judge whether he executes it, and of discharging him if

if they judge he acts contrary to his Trust ; this can't be deny'd without destroying the Nature of a Trust.

Wou'd not a Man be very ridiculous shou'd he cry, can such stupid fots as the People, tell what degrees of Weakness and Insanity, makes a Man incapable of Governing ? or can they produce any Scripture or the Original Contract, by which a Prince who has lost his Understanding, loses the Right he has to the People's Obedience ? If they without staying till the Prince declares himself a Fool, or Mad-man, have a Right, as soon as they judge him uncapable, - to entrust the Management of their Civil Affairs to other Hands, why must they wait till he is pleas'd to own himself a Tyrant ?

The only Difference between these two Cases is, that loss of Understanding being only a Misfortune, the People may again intrust a Prince with the Administration of their Affairs, when they judge he has recover'd such a degree of Understanding as makes him capable of it ; but Tyranny being a Crime of the highest Nature, and which shews a rooted Aversion to the true end of all Government, they are errant Fools to trust a Tyrant, if once they are so happy as to be rid of him.

The lower People are in Understanding the less will harangues of discontented Persons be able to make an Impression on them ; and, if their Stupidity be so gross, 'tis a Million to one but that will hinder them from perceiving their Danger till 'tis too late to prevent it ; which is the true Reason that the whole Earth, a very small part excepted, now groans under universal Slavery.

To go no further than this Part of the World, whoever considers, that within these two Centuries, there was not an Absolute Monarch in *Europe*, except the *Czar*, and that now ours is the only Kingdom where the Subjects enjoy any Freedom, must conclude, that People, instead of being too jealous of Designs against their Liberties, have had their Chains riveted before they guess'd what was intended for them.

It frequently happens, that the Populacy have had so profound a Veneration for the Persons at the Helm, that they have striven who should be the forwardest

in delivering up their Liberties, and Complementing their Prince with an Absolute unlimited Power.

Has not this Humour, without regard to what *Denmark*, and *Sweden*, have lately suffer'd by it, so far prevail'd, that we have had Addresses almost from all Parts, fill'd with Declarations of *Obedience without Reserve, Loyalty without Bounds, Absolute unlimited unconditional Submission*? And Two-thirds of the Legislature have been treated with the highest Insolence (tho' their Parliamentary Proceedings had the Queen's most Solemn Approbation from the Throne) because they vindicated that Resistance (and 'twas to that alone they confin'd themselves) to which the Queen owes her Crown, and perhaps, considering what Part She had in the blessed Revolution, Her Life; the Nation, their Liberty, and the Church their Religion; and what Danger wou'd the Nation be in, when the Means which were Necessary to secure all these Blessings, can't be mention'd without the utmost Detestation, by those who yet own the Name of *Protestants* and *Freemen*.

Where Property is but in few Hands, and the People Vassals to the Great Men, there the Discontents of the Latter may influence the Former; but where Property is so much divided as it is among us, and the middle sort have so great a Share in it, 'tis morally Impossible the bulk of the People shou'd have recourse to Arms, except their Ruin was very Apparent, and the Danger Universal.

They can have no other Aim than the Security of their Properties, and when those are tolerably Safe, whatever other Grievances may happen, they dread a Civil War too much, and apprehend the Consequences of it too well, to expose themselves to it.

Government is always invested with so much Power, that Resistance will bring Men to certain Ruin, except where the Generality of the People appear to be so discontented, that every one may see by their looks, they want nothing but a Leader to take up Arms; and in such a Case a Revolution is brought about with little Damage. The general disgust of the Subject, as in the Case of *Richard II.* does as (\* the Author of *Hereditary Right* expresses it) naturally produce a Deser-

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\* p. 107.



*tion*: But we need not go further back than the two last Revolutions, in *Great Britain*, to prove this; in all other Cases, Plots and Conspiracies, which 'tis a Million to one are discover'd before they are ripe for Execution, tend to the Strengthening of the Government.

I mention this with Relation to Free Governments, for where Sovereigns rule by standing Armies, as they do in all Despotick Governments, there the Soldiers, when they have found out their own Strength, make sad Havock among those Princes, so that no Man can be a Friend to Crown'd Heads, who will not do his utmost to prevent Arbitrary Power.

When Reason will no further help the Assertors of the Doctrine of Absolute Non-Resistance, then they have Recourse to Sophistry, and say, That except the Govern'd renounced all self Defence, this Absurdity will follow, That the Superior must be accountable to the Inferior, and the Governor become Subject to the Govern'd.

If the Relation between a Governor and his Subjects is dissolv'd, when he either will not or cannot protect his People, it must certainly be so, when, to Non-Protection he adds an Attempt to ruin them; because as much as ruining the Common-wealth, is worse than not Protecting it, so much greater Reason is there to conclude, the Relation is then entirely destroy'd: In such a Case 'tis not an Inferior that Judges a Superior, or a Governor being made subject to his Subjects, but the People's defending themselves, as by the Law of self Preservation they are bound, against one who has chang'd the Relation, he had to them of Governor for that of an Enemy; and an Enemy with all the most odious and aggravating Circumstances imaginable.

The End of the Governors Commission must be the Measure of his Power, as well as of the People's Obedience, and if that be to secure them in the Enjoyment of their Lives, Liberties, and Properties, nothing can be more absurd than to suppose, that because he has a Right to command the Force of the Society for the Defence of these, that therefore he has a Right to command it when he designs the contrary, and from which by the very Nature and Design of his Commission, he is more excluded than any other Person:

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And to suppose he may not be resisted, should he attempt it, is as absurd as to suppose, that Travellers had no Right to defend themselves against those they trusted with Arms to secure 'em from Robbers, if they used those Arms not to guard, but to rob the Travellers themselves.

God has given no Man a Right to use another Ill, much less to take away his Life, if he has done him or his Fellows no Injury; when that is not the Case, he is to do all the Good he can to his Neighbour, *whom he is to love as himself*; and consequently they who assist any Governour, in destroying or ruining innocent Persons, commit the same Crime, as if they had done this without a Commission; because no Power on Earth can authorize Men to do any thing which is contrary to the Law of God, and therefore no Mortal can have any Power either from God or Man, but upon Condition he employs it for the publick Good; which Condition if he breaks, by seeking to ruin the Common-wealth, the Obligation the People were under to him, by Virtue of that Condition, must needs be void; and they who have no Power over their own Lives, cannot, without being guilty of Self-murther, give themselves up to be destroyed, but are oblig'd by the Laws of God and Nature to defend themselves, as much as any private Man can be, when by the Suddenness of the Danger he can't have Recourse to the Magistrate for Protection; and if any Law, which forbids this, wou'd be void, it shews, that Obedience is due for no other Reason, but for the Sake of Protection, and that 'tis not within the Sphere of Government to determine, what Men shall do, when they are no longer under its Protection.

And now, I think, I may say, I have been as good as my Word in impartially stating the Differences between the two contending Parties; and the main Difference is, as every one may see, that one of them has nothing in View, but the Interest of a particular Person, and that every thing, whether he is in or out of the Government, is to be sacrific'd to him; for which Reason, if those evil Spirits, who are envious of the Happiness of human Societies, were to contrive political Principles for them, they could not pitch on any which could better shew their Hatred to Mankind, than those the *Anti-Revolutionists* would impose on us as Divine Truths.

And

And that the other Party on the contrary consider the Good of the whole, as the End and Design of Government, and make this the Rule and Measure of their Obedience ; for which Reason their Principles can't at any time be deviated from without Prejudice to the Publick.

If these Arguments prove, That a Nation is not disarm'd of all Self-defence, even when a Prince has the whole Legislative Power, they must conclude more strongly when he has but a Share in it, and is, by Virtue of his Office, to see the Laws, made for the Defence of Peoples Liberties and Properties, duly executed ; and it must be either the not understanding, or the not rightly considering the Nature of our Government, which can cause any Man to doubt of the Justice of the Revolution, and of the Laws since that Time made relating to the Settlement or Succession of the Crown.

And therefore to take away all doubts in this matter, I shall put the Reader in mind, that if the Law-making Power be the Supreme Power on Earth, they who equally share this Supreme Power, can have no Superior but God. And must not they who have no Superior but God be equal among themselves? and tho' all in their private stations are subject to the executive Power, yet I can't see how this will hinder their equality in their Legislative capacity, because the executive Power is deriv'd from, subordinate to, and dependent on the Legislative, since it wholly consists in putting their Will in execution.

Nor is this equality destroy'd, because the Prince can, provided it be consistent with the Laws for triennial Parliaments, appoint when the Legislature shall meet ; since the consent of both Houses, is not only necessary to the passing any Law, but all Laws, except it be a Parliamentary Pardon, must begin with them, and the King without having a Power to make the least alteration, must accept or refuse their Bills ; and since the Prince can't defray even the ordinary expences of the Crown, without being supply'd by the two Houses, who have it in their Power, to limit their Grant, both for time and quantity, there's no pretence to suppose the Power, the Prince has in assembling the Legislature can destroy their equality, as to their Law-making Power when assembled.

If



If the Supreme Power be thus shar'd, it necessarily follows, that shou'd any of the Three endeavour to assume the whole to themselves, the other two must have the same right to hinder it, as any Sovereign can to oppose another; since *that is wholly built on his having no Superior on Earth to judge between him and the Person who has injur'd him*; so that this right necessarily follows from the Constitution, by allowing each of the three an equal share in the Supreme Power, nor can you vary a little from this without destroying the Constitution; and as the two Houses are no more subject to be try'd in any Court for what they act in their Parliamentary Capacity, than the Prince himself, so they have always claim'd a right of being the sole Judges of their own Rights and Privileges, whereas, if any Subject apprehends himself aggrieved by the Crown extending its Power too far, he may apply himself to the Courts of *Westminster-Hall*, and from them there lies an Appeal to the Lords, who are the *dernier Resort*.

And if the House of Lords, whose Sentences can only be revers'd by the whole Legislature, to which their Concurrence is necessary, are not irresistible, tho' they shou'd, by vertue of being the Supreme Court, make such an order, as wou'd, directly or indirectly invest the whole Legislature in themselves, there can be no Reason why the Arbitrary Will of that Person, by whose Authority the Judges act, ought to be submitted to, if the Judges should be prevail'd on to give such Opinions, as invested the whole Legislature in him, because the Nation in either Case, is no more to be trick'd, than forc'd out of their Happy Constitution.

If it be lawful to frame such a Constitution as ours, it must be as lawful to defend it against any Part, who shou'd endeavour to destroy the whole, since every such Attempt must be a Renouncing and Abdicating that Authority, which it held by Vertue of the Constitution: And if the People may oppose either or both Houses, should they endeavour to overthrow the Constitution, the same Reason would justify them in defending it against the Prince, since the Constitution as little allows of an Absolute Monarchy, as it does of an Aristocracy, or a Republick.

I believe there are few of those, who are now for allowing to a Third of the Legislature, an Absolute Power over the Lives of the People, but wou'd maintain that the whole might be oppos'd, should they attempt to invest in themselves, all the Properties of a Nation: Then we should be told by these Gentlemen, that even the Power the Legislature had, was a Trust which cou'd not be interpreted, to extend to the depriving the People of their Properties, but for the making Laws for Securing and Regulating them; and there can be no Reason to allow more Power to one Third, than to the whole, except it be that which a Popish Author gives, why so many of their Clergy exalt the Power of the Pope, above a General Council, of which the Pope is but a Part, *viz.* because 'tis the Pope, and not the Council that bestows Pensions, and disposes of Preferments.

That Constitution is certainly worth defending, where the Laws are made by the Concurrence of several Bodies, which are a Check to one another, to prevent any thing passing into a Law, that may be prejudicial to the Publick; and where each of the Bodies are, in Interest, bound to admit none but just and impartial Laws, since each are subject to the Laws the whole makes, and one, at stated times, is chosen by the People, and generally composed of such a Number of Men of Estates, as 'tis impossible (Pensions and Places excluded) that ever they should have an Interest distinct from the Publick.

If the same Power which makes the Laws, be necessary to the repealing or changing them, each Part of the Legislature must be bound by what the whole Enacts; and consequently the Prince, can no more plead an Exemption from being subject to the Laws, than either of the Houses. And if the Legislature can hinder a Papist from sitting in either House, and Enact, that all Popish Peers, notwithstanding their Hereditary Right, shou'd, tho' it reach'd never so many, for ever be excluded from sitting in Parliament; for the same Reason, the Legislature must have the same Authority, to debar a Papist from coming to the Throne, or to Enact that he shall forfeit his Crown, if after he is King he turns Papist; or they can as well

well make any other Condition Essential to his holding the Crown, as they can to the Lords or Commons holding their Seats in Parliament, since 'tis impossible but that each Part of the Legislature, must be a like Subject to the Laws the whole Enacts.

Tho' without such a Law, a Papist is incapable of Exercising the Office of a King in a Protestant Nation; because, That obliges him to put the Laws, made for the Security of their Liberties, Properties, Lives and Religion in Execution; but a Papist is bound by all the ties his Religion can lay on him (and which none of them ever fail'd to Execute as far as they cou'd) to destroy their Liberties, Properties and Lives, in order to extirpate their Religion; and consequently whosoever declares himself a Papist, does by so doing, renounce all manner of Right and Title to the Regal Office; since by it he declares, he is oblig'd on pain of Damnation, to do every thing Contrary to what that Office requires of him, which is in the most effectual Manner, owning himself utterly incapable to execute it.

It was for this Reason, that the States of *Sweden*, declar'd *Sigismund* incapable of Governing them, his Father *John* having bred him up in the Popish Religion; and therefore they disposed of the Crown to his Uncle *Charles*, and never restor'd the Eldest Branch. And as this Settlement was maintain'd by the *Swedish* Nation, with the Approbation of all the Protestant World, so I am sure none of the Romish Persuasion can blame their Conduct, since they will not permit any Protestant, tho' he holds no Principles inconsistent with Governing Men of their Religion, to rule over them.

Whoever considers the Nature of the *British* Government, must needs see, that 'tis impossible any Person can have any Power, that is not subject to the Legislative, or Supreme Power; which, in making it Treason to deny, that an Act of Parliament can alter, or limit the Succession of the Crown, has only exercised a Right, which is inseparably annex'd to the Supreme Legislative Power; and they who deny this, must either talk without Principles, or make our Parliament, to be no more than a Parliament of *Paris*.

And



And in Truth, according to our Constitution, by *Hereditary Right*, can only be meant a Right, which the Legislature has given such a Family, to take by Descent till they think fit to alter it; which entirely depends on the Laws, which are nothing but the will of the Legislators; who, did they not regulate and limit the Succession of the Crown, as they see 'tis for the good of the Community, wou'd be wanting in their Duty; and the House of *Hanover*, has now the same Right to succeed the Queen, (whether you call it Parliamentary or Hereditary) as any of our Kings ever had, or by the Constitution ever could have, to succeed his Predecessor, since none could have any other than a Legal Right.

If the King can plead no more Privilege, than either of the Houses, upon the Account of his Share in the Legislature, to exempt himself from being subject to the Laws, he can plead none at all, upon the Account of his Executive Power; because, That, without confounding it with the Legislature, can extend no further than putting the Laws in Execution. And tho' the Prince, who is to execute the Laws, has a Share in the Legislature, yet that does not hinder, but that the Executive Power is deriv'd from, and dependant on the Legislature, and is either enlarg'd or diminish'd, every time a new Law is made, or an old one repeal'd, because there's either a new Power given, or an old Power taken away.

All Persons who are entrusted with executing any Commission, receive their Power, either immediately or mediately from the Legislators; who, if they please, may themselves appoint them, as they did formerly the Great Officers of State, and lately the *Irish* Trustees, Commissioners for stating the Debentures of the Army, Commissioners of Accounts, &c. And where they leave it to the Prince to Name any to Office, he can only Name a Person, who has all the Qualifications the Legislators require, for the Executing that Office; nor can he give him more or less Power, than they have annex to the Office.

Illegal Commissions are not only void, but all who act by them, may be as justly oppos'd or punish'd,

nish'd, as if they acted without any; and therefore in the \* *Act of Oblivion*, it was enacted, that all *Treasons, Murders, Felonies, &c. acted by Vertue of any Command, Power, Authority, Commission, Warrant, Instruction from his late Majesty, or his Majesty that now is, be pardon'd*: Which shews that the King, with whom this Parliamentary Pardon began, did as little as the two Houses imagine, that Obedience without reserve was due to his Commands, or that he had any Authority beyond the Law.

'Tis a Maxim in our Law, that the King in receiving Justice, is but equal to another Man, and the Judges are all sworn, to decree impartial Justice between him and the Subjects. And *Trefilian*, and other Judges, for not keeping their Oaths, have been executed, as in Case of Treason, notwithstanding they pleaded the King's Subsequent Pardon, as well as Prior Commands.

The Laws, the better to guard the Rights of the Subjects, will not allow the King by his own Warrant, to commit any Person, nor to draw up or Seal the Commissions of those who act in his Name, nay which is more, he is not to be a Witness in any Cause; and all this with the highest Reason, because the Office of King, was not fram'd for the King's but the People's Sake.

And yet all this might be easily evaded, if the Sheriff might not, unless discharged by a Legal *Supersedeas*, raise the *Posse* to oppose any Persons whatsoever, who shou'd presume to hinder him, from putting the Decrees of the Judges, relating to Matters of Property, in Execution.

This Grand Privilege, every *Britain*, has of resisting by Law, the Arbitrary Will of the Prince, would signify nothing, if the whole Nation be disarm'd of all self Defence; if instead of letting the Laws, which set him above the Common Level, take their Course, he governs by Arbitrary Power.

'Tis bantring a Nation to talk to them of their Rights, if they have no Right to defend their Rights against a Person, who has no Right to take them a-

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\* 12. Car. 2. c. 11.

way. And therefore your Passive-Obedience Men make themselves perfectly ridiculous, when upon their Principles they talk of the Excellency of our Constitution, and the Advantage *Free-born Britains* have above *slavish French Men*.

It would be very absurd to pretend Law for subjecting the Rights of the Nation to the Arbitrary Will of the Prince, from which the Laws were made to skreen them; and which, as long as they are permitted to take Place, 'tis impossible they should fall under.

Whoever is in the least acquainted with our Constitution, must needs see, whatever Law forbids resisting the executive Power, necessarily supposes the Laws duly administred; and if it would be absurd, so to interpret any Law as to make it destroy it self, it must be much more so to make it destroy the Legislature, upon whose Authority all the Laws depend; especially if it be such a Law as is made on Purpose for the better executing their Will, as all must do so, which require Obedience to the executive Power.

As the King by his Coronation-Oath is to see the Laws duly executed, and to govern himself and the People by them; so they by the Oath of Allegiance are to tender him all legal Obedience in the Discharge of his executive Office, or as the Oath of Fealty formerly express'd it, *That they would be obedient to the King's Laws, and every Precept and Process proceeding from the same.* So both those Oaths are for the Security of the Legislature, since that could not subsist, if the Laws were not executed.

People grossly cheat themselves with Words, if they have not a different Idea of the Word *King*, when they apply it to a *British* and to a *Turkish* King; or do not think the former is destroy'd, when the latter (who by our Constitution is a Tyrant, Robber, and Usurper) is set up.

And they must needs see, that Obedience is so far from being due to a *British* King, when he has no Authority from the Law to command it, that it is Part of his Office to punish those, who, tho' commanded and commission'd by himself, presum'd to exact it.

If



If it be essential to the *British* Constitution that the Laws should be made, repealed, or suspended by the King, Lords, and Commons ; a King that makes his Will the Law, and executes it as such, is so far from having a Right to be obey'd, that he destroys that very Constitution, upon which his Right, and the Right of all who are to succeed him, are built ; and when all the Power in *Great Britain*, both Legislative and Executive, is gone, is not the *British* King wholly lost, and his Regal Office annihilated ?

The Reasons, which the Commons went upon in their Conference with the Lords about the Vacancy of the Throne, are all built on this Foundation ; That King *James*, by avowing to govern by a despotick Power unknown to the Constitution, and inconsistent with it, had renounc'd to be a King according to Law ; such a King as he was sworn to be by his Coronation-Oath ; such a King to whom the Allegiance of an *English* Subject was due, and had set up another Kind of Dominion, which was to all Intents, an Abdicatation and an Abandoning his Regal Title : And nothing can be more evident, than that a King can't have a Mind to preserve the *British* Constitution, and at the same time bring in another as inconsistent with it as that of *France* or *Turkey* ; or that he can't have a Mind to a limited and an unlimited Power, or to govern according to Law, and according to Will and Pleasure, at the same time ; and consequently the setting up of the latter, is as much an abdicating that Power to which alone he had a Right, as if he had done it in the most express Terms.

When a Prince resigns his Crown, the Constitution is not destroy'd, as it is when he quits his legal Government to assume a despotick Power, even tho' he should not succeed in the Attempt, because it forces the Nation to have recourse to Arms in defence of their Liberties. And in a state of War is not the civil constitution destroy'd ? And must not then all the Right that the Prince, or his pretended or real Son, had by virtue of that Constitution fall with it ? And are not a People, in new forming their Constitution, at Liberty to chuse proper Methods to prevent him or any of his from making any such Attempt for the future ?

And

And yet had not the Nation, in new forming the Constitution, all the regard possible to the Royal Family, in settling the Government, first on their great and glorious Deliverer and his royal Consort, and then on her present Majesty; who next to them, had the greatest hand in the Revolution, and by her Presence encouraged those who had taken up Arms in defence of their Liberties, and since has not thought fit to trust the commands of her Armies to any, but who then preferr'd the service of their Country, before that of the late King.

Had King *James* left his pretended Child behind him, and there had been no doubt about the legality of his Birth, yet the necessity of Affairs would have obliged the Nation to act as they did; nor had they any other way to preserve themselves from the Power of *France* growing, by the treachery of our former Kings, to an exorbitant height: But when King *James* sent the Child away, and all that were in the secret of his Birth, (least that matter should be examined into) and kept him with him in *France*, so that there was no having one without the other, the Nation, which can never want a Power to do whatever it judges necessary for its own safety, were under an invincible necessity to take those measures they judg'd most proper for that End.

These Men can blame none but King *James*, who, by his Tyranny having lost all the Right himself had, could convey none to the *Pretender*; the Nation did nothing but what the Law of Self-preservation oblig'd them to, and no more than what all Nations have thought themselves bound to do, when their Liberties only, and not their Religion too, as in our Case, were at Stake.

All our ancient Lawyers, who wrote of the Constitution, and are esteem'd the Oracles of the Law, as \* *Bracton*, and † *Fleta*, say, ' That the King has above him the Law by which he is constituted King, and his Court (or Parliament) and therefore if the King

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\* L. 2. c. 16.

† L. 1. c. 17.

'is without a Bridle, *i. e.* without Law, they are to 'bridle him; the Meaning of which is, That if the King, by breaking in on the Constitution, gives them such a Superiority over him, as innocent Men have over an unjust Aggressor, that obliges them to bridle the lawless King; and before, as well as since the Conquest, we have many Instances where the Nation has exercised this Right, and even deposed their Kings, when they despaired of their Governing according to Law.

And had they not a Right to do so, when 'tis declar'd in express Terms in the Laws of *Edward* the Confessor, which our Kings have sworn to maintain, That *unless the King perform his Duty, and answer the End for which he was constituted, not so much as the Name of a King shall remain in him*: And *Henry I.* declares to Pope \* *Paschal*, 'That he could not diminish the 'Rights either of the Crown or Kingdom, that if 'he should be so base and mean as to attempt it, the 'Barons and People of *England* would not suffer it: And the Nobility in their Letter to Pope *Boniface*, writ by the Approbation of *Edward I.* and the Consent of the whole Commonality, protest, 'That they, 'by Virtue of their Oaths, were bound to the 'Observation and Defence of the Liberties, Customs, and 'Laws of their Country, which, by the Help of God, 'say they, we will defend by our whole Power, nor 'will we permit the † King, tho' he was willing, to 'attempt Things so unusual, undue, and prejudicial to 'the Royal Dignity: Which shews, that they thought the Oath they took to the King was for the Sake of the Constitution, and that they were obliged by it to oppose the King himself, if he broke in upon it: And in the Charters of King *John* and his Son *Henry*, both confirmed by Parliament, *It is declared to be lawful to resist the King, if he did not govern by Law.* And by the 12th of *Richard II.* it is likewise declar'd, *to be lawful if the King exercised his own Arbitrary Will to*

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|| *Lambert's Saxon Laws. Intra Leges Eduardi, cap. 17.*

\* *Coke's Inst. 12. p. 197.* † *Rolls of Parliament, 28 Ed. I. de.*



depose him, and set up somebody near a-kin to the Royal Stock. And when the Parliament put this Law in Execution on Richard II. they declared they acted according to the antient Custom of the Kingdom, *Prout in similibus casibus de antiqua consuetudine regni fuit observatum.*

And I suppose, the Author of Hereditary Right, who has writ so largely in Justification of the Proceedings of that Parliament, which sat in the 39th of Henry VI, will allow of their Enacting, that that King should forfeit his Crown, if he broke his Agreement with Richard Duke of York.

This, we may suppose, Q. Eliz. thought Law in her Time; because \* *Ailmer Bishop of London*, who writ by her Order in Defence of her Title, says, 'The regiment of Englande is not a mere Monarchie, as some for lacke of consideracion thinke, nor a mere Oligarchie, nor Democracie, but a rule mixte of all these, wherein ech one of these have or shoulde haue like Authoritie. The image whereof, and not the image, but the thinge in dede, is to be sene in the parliament hous, wherein you shal find these 3 estats. The King or Quene, which representeth the Monarchie. The noble Men, which be the Aristocratie. And the Burgeses and Knights, the Democratie. If the parliament use their priuileges, the King can ordein nothing without them; if he do, it is his fault in usurping it, and their follye in permitting it: wherefore in my iudgement, those that in King Henry the 8th's dais, would not graunt him that his proclamacions shoulde haue the force of a Statute, were good Fathers of the countri, and worthy commendacion in defending their liberty.

And King Charles I. thought this good Law in his Time, since he owns, † *That the Power legally placed in both Houses, is more than sufficient to prevent and restrain the Power of Tyranny.*

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\* *An Harborowe for faithfull and true Subiects, &c.*

† *King Charles's Answer to the 19 Propositions of Parliament.*

And there has not been a Reign since the Reformation, but where our Kings, our Parliaments, \* our Convocations, have approved, justified, aided, and assisted Subjects that have taken up Arms in Defence of their Liberties even under absolute Monarchies.

And if our Kings themselves allow, the Nation has a Right to act thus in Defence of the Constitution, it would be a Madness for any Subject to dispute it; especially if it be consider'd, that Divine Providence seems to have approv'd such Proceedings of the Commonwealth against tyrannical Princes, in giving them excellent Kings in the Room of the Depos'd, who have retriev'd the honour of the Nation, and acted for the publick Interest, as became persons advanc'd on the foot of Liberty.

The *Jacobites*, by making pitiful harangues about the hardship of the injur'd young Man, as they call the *Pretender*, hope to wheedle and soften the Nation into their ruin, but they sure are so wise as to think Charity begins at home, and to pity themselves, their Families, and their innocent Posterity, and not sacrifice all these to get a single Person into an Office, which upon all accounts, he is wholly unqualified to execute.

If Pity does not hinder but that, in all Cases where confiscation takes place, the crime of the Father is imputed to the Children, and they lose their Hereditary Right to those Estates, Honours, and Titles, which their Ancestors enjoy'd; why shou'd Pity any more take place, when a suppos'd Son is put by an Office, which, not like an Estate, is neither solely nor principally design'd for the good of the Person that holds it, but purely instituted for the sake of the Publick?

The Author of Hereditary Right supposes, all our Laws, and all other acts of Government since the Re-

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\* See *Hist. of Resistance as Practis'd by the Church of England*.

volution to be void, because the *English* Monarchy is an Hereditary Monarchy; which he defines to be a *Monarchy entail'd on one Family and descending successively to the lineal Heirs of \* it*, and says that it ought not to call'd an Hereditary Monarchy, if it could be limited by Act of Parliament; the Consequence of which is that there's no Power on Earth that can set aside Idiots, Madmen, Papists, or any others who are under an utter incapacity to Govern; for if the Supream, or Legislative Power cant do this, no other can.

This is what he boldly undertakes to prove, but he is so far from succeeding in the Attempt, that had he call'd his Book the *Hereditary Right of the Crown disprov'd*, it would have answered the Title; and therefore I shall have no recourse but to himself to refute this indefeasible Hereditary Right.

The first Argument taken from himself against it, is, that it was the usual Custom, i. e. the Common Law of England for our Kings to dispose of their Crowns as they thought fit, without regard † to proximity of Blood, and that it was the constant Practice ever since the coming of Austin (which was in the sixth Century) that Donations of the Crown made at point of Death, were alwaies held good and valid; and he allows that after the Conquest 13, of the first 19 Kings, did not succeed by Proximity of Blood; and what could he say more to demonstrate that such Hereditary Monarchy, as he contends for, can't be built on Prescription, constant Practice, Custom or Common Law?

Tho' this Author has, in the beginning of his Book, destroy'd the thing he design'd to advance, yet he is fond of the name; and therefore says that *William the Norman*, (tho' a Bastard and no kin to the Crown) had an Hereditary Right by the Donation of *Edward the Confessor*, who deriv'd his Title likewise from Donation; now if this Author would but call the Right the House of *Hannover* has to the Crown by the Donation of the Queen, Lords and Commons, an Hereditary Right, the dispute wou'd be at an end

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\* *Introd.* p. 11. † p. 22.



but if he will not, he must allow me that a Right, given by the whole Legislature, is as good a Right as what only one third of the Legislature can bestow, which, by our Law, is not impowered to give away the least Jewel in the Crown.

If *Henry I.* had a good Hereditary Right, as this Author contends, tho' he obtain'd the Crown in opposition to his Elder Brother, and contrary to the Will of *Rufus*; who had made a solemn agreement with *Robert*, sworn to not only by themselves, but twelve *Barons* on each side, that which of the two dyed first and Childless, the other shou'd succeed: And who in his Charter, where he confirms the *English* Liberties, declares that he owes his Crown to the Common Council of the Barons; if that King, I say, had an Hereditary Right, I defy him to mention any other who ever was, or ever cou'd be without an Hereditary Right.

He supposes, that if a King be as far off as *Hungary* when the Throne becomes vacant, the next of kin that is at home, if he steps into it, has a good Title, \* and upon this Reason justifies *Edward* the Confessor for taking upon him, not the Administration during the Absence of the rightful Heir, but the Crown it self.

He supposes, he that keeps the Crown for the rightful Heir, and when he dies, gives it away to another who is not of kin to the Crown, is a rightful King, because his good intention makes him so; and for this reason he makes *Edward* the Confessor a rightful King, tho', he says, † *he did not discover his Inclination to do Justice to his Nephews, at least till the eleventh Year of his Reign*; and all the justice he at last did them, was to exclude them from the Crown.

Another Argument against the indefeasibility of Hereditary Right is, that the King by his own Authority may exclude the next Heir for incapacity; and this, he says, was the case of || *Edgar Atheling*; and how incapacitated he was to Govern, the Reader may judge by what he says of him, that the ' *Saxons*, when a bold and daring enterprise was necessary, chose *Ed-*

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\* p. 26. † p. 27. || p. 30.

‘gar for their King, that he fought two Battles for  
 ‘English Liberties against the *Normans*, that he was  
 ‘one of \**Roberts* chief Councillors, that he undertook  
 ‘to mediate a treaty between King *Rufus* and *Scotland*,  
 ‘which terminated in a happy Peace; and that  
 ‘he was in such favour and Credit with *Rufus*, that  
 ‘he placed him at the Head of an Army, to settle  
 ‘his Nephew on the Throne of *Scotland*; and can  
 this Author deny it lawful to set aside one who, had  
 he no natural, yet is under a moral incapacity to  
 govern a protestant Nation?

This Author goes further, and supposes a Person  
 who is not fit to govern, may justly be depriv’d of  
 his Dominions for male administration; and therefore  
 commends *Hen. I.* † for rescuing the *Normans*, upon  
 their request, from the Tyranny of *Robert*, as a Person  
 by no means fit to Govern; and he confin’d him in  
*England* Prisoner during his Life, and set aside his  
 Son; can a Man after this, plead for Passive Obedi-  
 ence, and condemn what was done at the Revolution?

Another Argument he uses, to shew that Proximi-  
 ty of Blood does not give an unalterable Right, is,  
 that the Heir to the Crown, may by Cession exclude  
 the next of Kin, and thereby make another a King  
*De Jure*; and that || this Cession is valid whether done  
 by Words or Actions; and therefore he says, \*that by  
 the Cession of *Edgar* (tho’ he had two Sisters then alive)  
 had *Edwards* settlement been of no Authority, *William*  
 became a King *de Jure*; so he says, that *David* King  
 of *Scots*, (whose Right was Prior to *Mauds*) by assisting  
 her, and not putting in a claim to the Crown, lost  
 his own Hereditary Right, and that of his Descendents,  
 (who even to this Day are very Numerous in *Scotland*)  
 † he supposes *John* to become a lawful King, becaule  
 his Elder Brother’s Son, *Arthur*, (whose Sister *Eleanor*  
 was alive) did Homage to *John* as King of *England*  
 and his Sovereign Lord, tho’ the Author he quotes in  
 the Margent, says it was to *Philip* King of *France*,  
 that he did Homage for the Lands, which by his Assi-

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\* p. 36, 37. † p. 39. || p. 23. \* p. 35: † p. 61.

stance,

stance, he hop'd to recover from *John*; but such Mistakes are common in this Author; as for instance, when he thought it for his purpose to prove that *Edmund Ironside's* Children had no Right, he quotes *Brompton* for saying, the Barons own'd that *Edmond Ironside* left the whole Kingdom to *Cnute the Dane* after his Death; but he leaves out those Words *falsissime & adulatorie*, and least this might be discovered he omits quoting the Page 907. And he as Prudently, in the same place, leaves out of his Quotation, from *Simeon of Durham*, that the great Men confess'd *Cnute* was made Protector of the Children of *Ironside*, till they became capable of Reigning; and he is so gross a falsifier, that there are a number of places where his *English* Translations, (so much does he presume on the Ignorance of his Readers,) differ from the *Latin* Authors he quotes in the Margent; and yet notwithstanding this, all his inferences from those Quotations, serve to no other purpose than to destroy that Hereditary Right he wou'd build on them.

He supposes, that if the resignation of \* *Richard* Duke of *York* had been made in, and by consent of Parliament, it had depriv'd his Son (afterward *Edward IV.*) of his Right; but if the Cession of the Right Heir is not valid, unless made after this manner, the Cessions he lays such stress on were all void as being but private Acts, and some but bare Implications.

He concludes, that the next Heir has a Right to divide the Kingdom; and tells us, that *Henry II.* engag'd himself by Oath, if he recover'd his Kingdom, to let the King of † *Scots* have all the Country between the *Tine* and *Tweed*; and supposes that the Earl of *March* might, wou'd this Age have permitted him even while he was heading an Army for *Henry IV.* have given the Principality of ‖ *Wales* to *Owen Glendowr*

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\* p. 100. † p. 57. ‖ p. 79.



This Notion he may possibly advance to, shew that the *French King* may, by the Cession of the *Pretender*, have a Right to a Part or to the Whole of *Great Britain*.

I can't see how even an Absolute Monarch has Authority to bequeath his People, after his Death, to whom he pleases, because his Authority can't survive his Person; nor can he deliver over his People in his Life time, to whom he thinks fit, because in order to give the Government to another, he himself must first part with it, and be then in a private Condition; and consequently can have no more Power than any other Private Person to dispose of the Crown; his Act can be only valid as far as 'tis in his own Power, *viz.* as to his own Resignation.

Another Argument against an unalienable Hereditary Right, obtaining by constant Prescription is, that we find, as he observes, \* the Bishops and Clergy pretending to the Sole Authority, where the Pope did not interpose, of making and removing Kings; and taking upon them to dispose of the Allegiance of the Subject.

† And he gives us several Instances, where they, by their own Authority, pretended to dispose of the People's Allegiance, and oblig'd them to swear, and forswear as they thought fit; ‖ and *Stephen*, he says, was *advanc'd to the Throne by the Bishops, and confirm'd in it by the Pope*.

By our Author's Principles, I do not see how any can be his Lawful King, who does not hold his Kingdom of the Pope; since *John*, \* who, he says, was a Rightful King, both by Donation and Cession, gave away the Kingdom to the Pope, that he and the Succeeding Kings should hold it in Vassalage; and he supposes a Right to the Crown once obtain'd, can't be lost in tract of time.

This Author is so far from making a lineal Succession, to give an unalienable Right, that he supposes People are bound by the Determinations of the Peers, even when they act under Restraint; and therefore in

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\* p. 53. † p. 54. 104. ‖ p. 43. \* *Append. p. 15.*

answer to the Objection, that the Declaration of the Peers, in favour of *Richard* Duke of *York*, (who rais'd an Army on Pretence of redressing Grievances, and then claim'd the Crown) was Partial, because he was Absolute Master of the Parliament, and King *Henry* his Prisoner; he says, ' that the means by which this Declaration was obtain'd might be Unrighteous, and ' yet the Acts, effected by them, of good Authority. ' \* The Peers were the proper Judges of the Laws of ' their Country, and therefore whoever arraigns their ' Proceedings in this Respect, does, in Effect, set up ' his Private Judgment against the Publick Sense of the Nation; so that by this Reasoning, whoever has Power enough to get the Peers to declare for his Title, must oblige every one, what ever his Private Opinion is, to own his Title, because the Proper Judges, in whose Determinations all must acquiesce, have so adjudg'd it.

In a Word, by reading this voluminous Work, you will find, People went by no certain Rule in disposing of the Crown; for he tells us, that it was alledg'd in Relation to *Maud* the Empress, † that it was unnatural, and against the Laws of the Realm, for a Woman to Reign; and in the Margent he quotes ‖ *Math. Paris*, for saying, that all the Prelates, as well as Earls, and (if he had not maim'd his Quotation) he shou'd have added Barons who had sworn to *Maud*, were of this Opinion.

He asserts that *Henry VII.* by Marrying the Heir of the House of *York*, undoubtedly became a King *de Jure*. I believe there's none of that Opinion, except that Reverend Divine, who, upon the Death of King *William*, pray'd for King *George* and Queen *Anne*. And this is more inexcusable in this Author, since he says, that *Henry VII.* never own'd the Title of his Queen, and set up that of *Lancaster*, in Opposition to it.

He makes both Queen *Mary*, and Queen *Elizabeth*, Legitimate, (tho' no Law supposes both to be so) and both to succeed by Hereditary Right; tho' ac-

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\* p. 102. p. 99. † p. 44. ‖ *Matth. Paris*. p. 74.

according to his Principles, if the King by Common Law has a Right to dispose of the Crown, neither cou'd have a Right : Since the Lady *Jane Grey*, like *William* the Conqueror, and other such Hereditary Kings, had the Crown bestow'd on her, by the last Will of *Edward VI.*

This Author, if he wou'd act consistently with his own Principles, ought to pay his Allegiance to the House of *Suffolk* ; since *Henry VIII.* by his Will, appointed them to succeed his Children if they dy'd without Issue : And he spends several Pages to prove that this Will was executed in due Form.

If our Kings, as he pretends, have a Right by Common Law to dispose of the Crown by Will, and there were, \* as he says, several Acts of Parliament to exclude King *James* ; is not this, instead of asserting the Cause of the *Pretender*, impudently striking at the Right and Title of the Family of the *Stuarts*, in supposing they succeed Contrary, both to Common and Statute Laws ? But he seems to be aware of this Objection ; and therefore says † *the Three Estates, made an Original Contract with the First King of this Line*, and bound themselves and their Posterity for ever ; which is supposing the Three Estates, ‖ (to whom but a few Leaves before he will allow no Power at all) have a Right to dispose of the Crown, contrary both to Common and Statute Law ; and that King *James* and his Posterity, owe their Right to this Original Contract, which the States made with him, since before such Contract, neither Party cou'd be under any Obligation to each other.

How must a Man's Head be turn'd towards Arbitrary Power, who can suppose, that a King, at the point of Death, when his Weakness makes him liable to be easily impos'd on, can give away the Crown to whom he pleases, and yet can't dispose of it upon the most mature Deliberation, with the Advice and Consent of the Grand Council of the Nation. And it wou'd be very strange if the King, shou'd have been permitted to have such a Power over the whole Kingdom, when no Man

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\* p. 209. † *Int.* p. 15. ‖ *ib.* p. 7.



till the 32d. of *Henry VIII.* cou'd by his last Will, or in his Sickness, dispose of his Land.

The King can't have this Power upon the Account of the Share he has in the Legislature, because no Legislative Act can be valid, without the Concurrence of the whole Legislature; nor can he have it by Vertue of the Executive Power, because, tho' he is Authoriz'd to appoint those who shall execute the Laws under him, yet he can't grant the Reversion of any Judicial Office, or devise it by Will; much less can he have such a Power over the whole Kingdom, as to grant away for ever, to whom he thinks fit, the Kingly Office, with That he is entrusted for the Benefit of others, and consequently can't have such an Absolute Interest in it, as a Man may have in an Estate; and no Offices of Trust are devisable, tho' one has an Hereditary Right in them, much less a Trust of the greatest Importance, the disposal of which the Nation will never put out of its own Power, because then it might be given away, or by Marriage come to such a Prince, who, having a better Kingdom of his own, wou'd govern *England* as a Province; and if it be absurd to suppose, the Lords cou'd devise by Will their Seats in Parliament, it is much more absurd to imagine the King cou'd so dispose of a Trust, of the highest Importance to the Nation.

Nor does this Author believe it, since he Affirms, and that too from the Authority of Judge *Hales*,  
 \* That a King can't resign his Kingly Office, without Consent of Parliament, because there's a Sacred Bond between them, that can't be dissolv'd without their free and mutual Consent in Parliament; and yet without regard to this Sacred Bond, he all along supposes, that the King has such an Absolute Dominion over his Kingdom, as that he can by Will or Deed, dispose of it to whom he pleases; † So, tho' he asserts that the next Heir, tho' never possess'd of the Kingly Office, can't part with his Right but in Parliament, and by Consent of Parliament, yet he all along takes it for granted, that his Resignation is valid without it;

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\* p. 100. † *ib.*

may he suppose, \* ' that having Reason to imagine  
 ' that, when *Henry II.* was sent for into *England*,  
 ' upon the Death of King *Stephen*, his Mother gave  
 ' him joy, and wish'd him a good Voyage, and such  
 ' like Circumstances imply a Cession of Right.

This Author, I suppose, thinks it dull to say the same things over and over, and is for entertaining his Reader with somewhat New and Surprizing; and what can be more so than an *Original Contract*, made so lately as King *James I.* time, † and an *eternal and immutable* Act of Parliament founded upon it? And yet, notwithstanding this *Original Contract*, he says the Family has had a Prescription of 900 Years, and a continued Claim of 530; now, either to get a Right by Prescriptions 350 Years before any Claim was made, or else to have it continued, after all Claim to it has been dropt for so long a time, is a Discovery worthy our Author.

If a single Person may manage his own Affairs as he thinks fit, where no Law of God or Man interposes, a Nation sure must have the same Right in things which relate to its self, and there is no Law of God, that takes away this Liberty; and the Law of the Land is nothing but either their express or presum'd Will, or in other Words, Statute or Common Law; and if one Act of Parliament can be repeal'd or alter'd by another Act, and that likewise can alter the Common Law in any Point, the Right of Succession, which must be built on, either Common or Statute, Law, must be alterable by Act of Parliament.

The tacit or presum'd Will of a Nation, in things relating to particular Persons, can only be known by a long uninterrupted Practice, but in things where the whole Nation is concern'd, and all must Act, there is no need of time for the Discovery of their Will, That is sufficiently express'd by their Actions; and consequently, when by those they have own'd any King, he must have as good a Title, as any of our Author's Kings, who succeeded without an Act of Parliament.

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\* p. 58. † Int. p. 15.

Before the Conquest, there's nothing plainer in History, than that the Kingdom was elective, and at the great Council of *Calebruth* in 787, compos'd of the Nobility as well as Clergy, it was ordain'd, *that the King should be chosen by the \* Clergy and the Elders of the People*: Nor did they then confine themselves to one Family, much less to a lineal Descent, but chose whom they thought the fittest to govern, and generally prefer'd Men to Children, and sometimes the Illegitimate to the Legitimate.

All that we learn of our *Saxon* Ancestors from History, is, that, before their Coming here, Things of great Consequence were determin'd by all the Freemen, and the lesser by the principal Persons; and when upon their Coming here, they had such a standing Officer as a King, his Power was so limited, that he could do nothing without the Consent of the one or the other: And they chose him, as before they did their General, in whose Place he succeeded; and the greatest of the *Saxon* Kings acknowledge, that they owe their Crown to the Election of the Nobles and People. King *Alfred*, for Instance, says in his Will, (a) That he ow'd his Crown to the Bounty of the Princes and Elders of the People; and the same Thing is acknowledg'd by that brave *Saxon*, (b) King *Offa*; and sure two such Witnesses are sufficient in this Case.

The best Account, we have of our Government in the *Saxon* Times, is from what *Nat. Bacon* has collected from Mr. *Selden*, and he says, (c) 'The Saxons 'had so hamper'd their Kings in their Election, and 'made them so properly their own, as that they 'claim'd an Interest, not only in their Persons but 'Estates: For King *Baldred* had given the Mannor of 'Malings in *Sussex*, to *Christ Church* in *Canterbury*;

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\* *Sanximus ut legitime reges a sacerdotibus & senioribus populi eligantur.* Spelman's Councils. Vol. I. p. 296.

(a) *Annex't to his Life by Menevenfes.* (b) *Ad libertatis vestra tuitionem non meis meritis, sed sola liberalitate vestra unanimiter me convocastis.* Addit. Mat. Paris. (c) *Govern. of Eng. p. 31. f.*

' and



and because the Lords consented not thereto, it was revok'd; and King *Egbert* made a new Grant by Advice of the Lords, which shews, that the Demesnes of the Crown were held *Sacred*, and not to be disposed of, tho' to a *Pious* Use, without the Consent of the Lords; and herewith concur all the *Saxon* Infeodations, attested and confirm'd by Bishops, Abbots, Dukes, and others of the Nobility, under their several Hands.

And if those Kings could not dispose of an Acre of Crown-Lands by their own Authority, much less could they dispose of the Crown.

The Monarchies establish'd by the *Northern* Nations in these Parts of the World were all elective; this, as to *France*, is evident from *Hotoman's Franga Gallia* (not long since translated into *English*, by the Author of the Account of *Denmark*) and that this was the same in *Spain*, is as plain from History: Nay, their very Councils own so much; the fourth Council of *Toledo* forbids any to aspire to the Kingdom, without the Consent of the \* Nobles and the Clergy: And in the fifth Council of *Toledo* † he is anathematiz'd, who should attempt to gain the Crown otherwise than by Election; and 'tis certain, that the same Kind of Government was establish'd in the other Parts of *Europe*.

And here after the Conquest till *Henry V.* we find no King came to the Crown, without being chosen by the People and Peers, tho' they confin'd themselves to one Family, as being best able to support the Royal Dignity, (as we see the *German* Electors for almost these two last hundred Years have done) and perhaps the Emulation that was among the Nobles did not a little contribute to it.

We may perceive what were the Sentiments of those Times, by what \* *Hubert*, Archbishop of *Canterbury*, preach'd at King *John's* Coronation, That none could make any Title, except chosen by common Consent; and that if any one of the Race of the deceas'd King was more

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\* *Conc. Tol.* 4. c. 74. † c. 3. \* *Mat. Paris*, 197.

deserving

*deserving than others, the People ought more readily to elect him, than a Stranger to the Royal Blood : And accordingly they unanimously preferr'd John to his Nephew Arthur, as thinking him the more worthy : But when they found he by no Means answered their Expectation, they depos'd him ; and without Regard to the Title of Eleanor, King John's Neice, they chose Lewis the French King's Son ; whom afterward they drove out of the Kingdom, when they found he had a Design (and what better can be expected from French Gratitude) to destroy them, and root out their Posterity.*

In those Days they had no Regard to the next of Kin, but as his good Disposition to sway the Scepter, did recommend him, and chose those who, they believ'd, would have the greatest Regard to the preserving of their Liberties ; for which Reason, of the 19 first Kings from the Conquest, 13 of 'em did not succeed by Proximity of Blood.

If the Succession was govern'd by the same Rules as at present, so great a King as *Henry II.* need not have taken so extraordinary a Method to secure the Crown to his eldest Son, as to declare him King in his Life Time ; nor would *Edward II.*, after the Nation had formally depos'd him, have thank'd † them, because they elected his Son to reign after him.

*Henry I.* did all that lay in his Power to oblige the Nation to let his Daughter *Maud* succeed him, but they unanimously chose *Stephen* ; and afterward being provok'd by his Male-Administration, a great Part of the People, particularly the Clergy, declar'd for *Maud* : Yet they did not do this, without first going to an Election, as may be seen by the Quotation our Author mentions in the Margent, p. 50, which is that *in Dominam eligissent* ; tho' he according to his usual Method gives an Account of it very different from the Book he refers to. Had this Author been impartial, he should have own'd, that when *Maud* refus'd to confirm the Peoples Privileges, then they deserted her, which shews, that they were wholly influenc'd in this Matter by the Preservation of their Rights.

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† Knight p. 2110.

When the People were oppress'd as sometimes they were, by those they had preferr'd to the next of kin, and yet were oblig'd to have Recourse to these to free them from Oppression, they when at the Head of their Armies would talk big about Proximity of Blood, as *Henry II.* did; yet he was glad to drop that Pretence, and to Succeed as *Stephens* adopted Son, by Virtue of an Agreement confirm'd by Parliament: so tho' *Richard* Duke of *York*, who, after he had rais'd an Army on pretence of redressing Grievances, and got *Henry VI.* into his Hands, insisted on his Hereditary Title, yet he drop'd it upon a Parliamentary Compromise, that he shou'd succeed *Henry VI.* and his Son \* *Edward IV.* openly insisted on this Title in the Speech he made at his Coronation.

They who had a lineal descent were as much Elected, as those who had not, as for instance *Richard I.* notwithstanding his Primogeniture, was solemnly and duly elected by the whole Clergy and || Laity; and the Commons declared that they had granted to *Richard II.* to use the same Liberty that the Kings of *England* before him had us'd, and the same Commons declar'd, that having confidence in the prudence and moderation of *Henry IV.* they Will and Enact † that he enjoy the same Authority that his Ancestors enjoy'd, so that they make no Distinction, in disposing of the Crown between him who had no lineal descent and his Ancestors who had:

The Clergy in those Days, were so far from thinking it a Disgrace, for Kings to derive their Power from the People, that they thought it gave them a sort of Divine Right; and therefore when the glorious *Edward III.* was, by the universal Consent of the People, elected King in his Fathers Life time, *Walter* Arch-Bishop of *Canterbury*, who preach'd his Coronation Sermon, took this for his Text, *vox populi vox Dei*; the Voice of the People, is the Voice of God; and even the Pope himself, after having Complemented King *Stephen* in his Charter of Confirmation, as unanimously cho-

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\* *Hubingt.* *Edward IV.* F. 73 || *Post tam cleri & populi solemnem & debitam electionem.* \* *R. de Deto* 647. f. R. H. P. 2. F. 6. P. 56. † *Parl. Rolls* H 6.



sen by the consent of the People adds, *that so unanimous an Assent, cou'd not but be directed by Divine Grace.*

Donation by Will, no more than primogeniture, was esteem'd to convey a Right, but both were us'd as Motives to influence the People in their Election; as for instance, if *Hardicnute*, as our Author affirms, gave the Crown by Will to *Edward* the Confessor, yet all our Historians say, he owed his Crown to the Election of the People; the Chronicle of \* *Brompton* and *Huntington* affirm, that he came into *England* upon the invitation of the People with a few followers, and was made King by their common Consent.

*Edward* the Confessor, by his Will, named *Harold* for his Successor, as is plain from the † *Saxon Annals* and from the History of the Abby of ‖ *Ely*, written not long after the Conquest, and from *Eadmerus* and others; and *Simeon* of *Durham* says; \* that *Harold* was in so much Favour with the Confessor, that he made him general of his Army, and Viceroy, and oblig'd the Princes of *North Wales*, to swear fealty to him, as well as to himself and with him *Florence* of *Worcester* agrees, which shews, that the Confessor design'd, *Harold* for his Heir, for some time before his Death; and notwithstanding this, the Historians agree, he was chosen by the People, and he himself † owns that the King cou'd not dispose of the Crown, but by the general Consent of Senate and People, and *Mat. Paris*, who liv'd in *Henry III.* time, says, that *Edwards* giving his Crown to *William* the Bastard cou'd have no force, because done without Consent of the Barons, who, as the Author observes, declar'd King *John* ‖ had forfeited his Crown, because he disposed of it to the Pope, without their Consent, and he, as knowing his Gift of the Crown was of no validity without their Consent, pretended in his Grant to the Pope to have had it.

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\* p 136. l. 365. † p 172. ‖ b 2. c 23. f 515. \* p 192.  
† *Malmbury* p 199. ‖ p 45.

*Rufus*, by which he cou'd mean no more than recommending him to the People \* since, the same Author tells us, he delcar'd on his Death Bed, that he appointed no Heir for the Kingdom of England, he not having obtain'd so great a dignity himself by Hereditary Right; and the Author of the General History of England † produces several Authorities, particularly Manuscript History, written in the time of *Henry I.* to prove that *Rufus* succeeded by a downright Election.

But I need say no more on this Head, since it can't be suppos'd that our Ancestors, who look'd on the Kingly Office as a Trust deriv'd from them, and therefore thought, as 'tis evident from their practise, both before and after the Conquest, that they had a Right to deprive their Kings of their Office for male-administration, wou'd ever consent that the King shou'd have such a property in the Kingdom, as to be able to dispose of it at will and pleasure; can our Author, who tells us that *Henry VI.* \* had recourse to an Act of Parliament, to appoint a Deputy to govern the Kingdom during his Sickness, think that he cou'd absolutely give away the Kingdom without consent of Parliament?

Our Author owns, there was no Law relating to the Succession of the Crown † till That of *Henry IV.* which settles it on his four Sons and their Heirs; and our Historians observe, that the Nation began to innovate in this point, and to change from the manner of their Ancestors, ‖ with relation to *Henry V.* and and from that time, the elections of the People dwindled into an empty Ceremony, and only serv'd to shew what it was formerly.

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† *Neminem anglia regni heredem constituo, sed eterno Conditori illud commendo, non enim tantum decus jure Hereditario possedi sed diro conflictu multa effusione cruoris perjure Regis Haraldus abstuli.* f. 659.

‖ *Introduc'd. to his second volume p. 109.*

\* *Append. p. 1. † p. 185.*

‖ *Polydore Virg. f. 22. Hist. Ang. in vit. H. 5. Stow in the beginning of the Life of H. 5.*

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\* *Append.* p. 1. † p. 185.

‖ *Polydore Virg.* f. 22. *Hist. Ang. in vit. H. 5.* Stow in the beginning of the Life of *H. 5.*

The Parliament, by settling the Crown on *Henry VII.* and the Heirs of his Body exclusively of any other, had no Regard to the Title of his Queen, the Heiress of the House of *York*; tho' they had revers'd that Act, which illegitimated *Edward IV's* Children; and his Son *Henry*, who did not pretend to the Crown, upon the Death of his Mother, Succeeded by Vertue of this Parliamentary Entail. And so Absolute was the Power which the Parliament, claim'd in this Point, that in settling the Crown on *Henry VII.* they\* declar'd, it was for avoiding all Ambiguities and Questions. So in the 25 of *Henry VIII.* c. 22. the Parliament affirm'd they were bound to provide for the perfect Security of the Succession, and that for avoiding all future Questions they do enact, &c. And they not only exercis'd this Power themselves, but delegated it to that King, and declare, they do so, † because of the great Trust and Confidence they plac'd in his Majesty.

The Court Lawyers, whose Business it is to extend the Prerogative, wou'd never have own'd, in the Reign of so Absolute a Prince as *Henry VIII.* any Power in the Parliament, which wou'd in the least diminish that of the Crown, were it not evident; and what their Opinion was, is very plain from the Question the Solicitor put to *Chancellor More*, in order to persuade him to own the King's Supremacy, and his Answer. The Solicitor *Rich* ask'd him, Whether it wou'd not be Treason to oppose *Richard Rich*, if the Parliament shou'd make him King. || And *Sir Thomas More* said, That was *levis Casus*, (a Matter of no Difficulty) since the Parliament cou'd make, and depose a King as they thought fit.

By the 13 of *Eliz.* c. 1. it is not only made Treason to deny the Power of the Parliament in limiting the Crown, but highly Penal also to affirm, that any besides the Issue of the Queen's Body, before the same was settled by Parliament, had a Right to succeed after Her; which evidently proves, that it was the universal Opinion of those Times, that the Succession was wholly

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\* Bucks. Rich. 3. V. fol. 141. † 28. & 35. of H. 8. || Herbt. H. 8. in the 2. Vol. of Hist. of Eng. p. 183.

under the controul of the Parliament, and that none had a Right to the Crown, otherwise than as they settled it; and certainly if the nature of our Constitution is not since alter'd, our Parliament hath not exceeded their Just Power in making it Treason, *by Printing or Writing, to affirm, That any Person has a Right to the Crown, otherwise than by the Acts of Settlement.*

Tho' I have been at the Trouble to answer, what this Author argues from the Constitution, as it was in former Times; yet, since every thing that is Human, must be subject to the Determination of the Supreme Powers, the People can only be concern'd to know how the Law stands at Present, with Relation to the Settlement of the Crown.

If any shou'd be still so weak, as to have Scruples about the Authority of the Present Power, or to think Allegiance is not due to the Prince in Possession; the best way to satisfie him, wou'd be to refer him to those Laws relating to this Point; which tho' made a long time since, have been found to be so much for the publick good, that they have continued in being ever since.

It's certain, Treason can't be committed, but against the Person to whom Allegiance is due; and the only Ancient Law now in being, upon that Head, is the 25 of *Edward III.* and nothing can be Plainer, than that this Statute was made for the Security of the Prince, who had the actual Administration; since it makes it Treason to take up Arms against him, or to assist his Enemies, within or without the Kingdom, or to kill the Judges, (who must act by his Authority) while they were Executing their Office.

As this Law was first made for the Security of *Edward III.* who came to the Crown, upon the Deposition of his Father, so all Succeeding Princes, by Vertue of being in Possession of the Government, have made use of it for their Guard and Protection; and the King, in this Act, can relate to none but the King in Possession, since from the beginning of our Government, to at least an Hundred Years after the making of this Law, no Person, but he who was in the actual Possession of the Government, ever so much as took to himself the Title of King; and his Election and Coronation always proceeded the Date of his Reign,



And our Author himself quotes it, as the Opinion of Judge *Hales*; \* ‘ That the King, mention’d in this Act, is that Person who is in the sole and actual Possession of the Kingly Stile and Government; and that the right Heir, sitting still in a Private Capacity, is not a King within this Act, till he obtains the Exercise of the Sovereign Power: And consequently ’tis not his Heirship, but the Exercise of the Sovereign Power, that makes him a King within this Act, till then, since he is no ways excepted, it must be Treason in him, as well as in any other, to oppose the Person who is in actual Possession of the Government.

The Peace and Quiet of the Kingdom can’t be secur’d, but by such a Statute as this, which guards the Throne, against the Attempts of all who receive Protection from it; and binds them to a quiet Submission to that Office, which is Sacred in whose Hands soever it is. Were an *Anti-Revolutionist* to interpret this Statute, his Exposition wou’d run thus? ‘ It shall be High Treason to compass the Death of the Rightful and Lawful King, but if there be one in Possession of the Throne, who is not Rightful and Lawful, then it shall be no Crime in any particular Subject to compass his Death by taking up Arms, &c. in order to the Instating him, who has a Right to the Throne. What Prince cou’d be safe, if every Private Man had, by the Law, a Liberty thus to examine into, and pass Sentence on his Right? no King, let his Title be what it will, can be Safe in the Possession of the Government, but by a Law which makes every one safe who is in it.

As the 25 of *Edward III.* can relate to none but the King in Possession, so none were ever punish’d by that or any other Standing Law, for defending him; yet sometimes they who prevail’d by Force against the Possessor, have, to lessen the Number of their Enemies, and to reward their own Adherents with their Estates, prevail’d on the Parliament, which, upon such a Turn, was generally made up of their Creatures,

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\* p. 221.

to attaint particular Persons by a Law made *ex post facto*.

To put an End to this wicked and inhuman Practice, was the 11 of *Henry VII.* made; which having in the Preamble declar'd, ' that it is contrary to all Law, Reason, and good Conscience, That Subjects any thing shou'd lose for doing their Duty, and Service of Allegiance; Enacts, That no Person who does the King, for the time being, true and faithful Service of Allegiance, shall be anywise molested, &c. and that none shall take any Benefit by this Act, who shall decline from his said Allegiance.

One wou'd think none but an Enemy to Mankind, cou'd speak against a Law so suited to their mutable State, and to those Vicissitudes which attend Human Affairs. certainly no Prince can desire more of his Subjects, than to do their best to defend him in the Possession of the Government, and this Law condemns any, who, as long as there's any Contest about it, declines from his Allegiance; if any thing can be against all Law, Reason, and good Conscience, it must be, that Subjects stand in Danger of being hang'd by the King in Possession for not obeying him, and by his Successor for obeying him.

Our Author, \* tho' he owns that this Statute, if *Henry VII.* had been dethron'd, wou'd have effectually secur'd his Adherents, yet wou'd not have the King, for the time being, to mean any other King, but he who had an Hereditary Right; † and says, † if *Perkin* had been the Real Son of *Edward*, *Henry VII.* was too wise a Prince to imagine this Law, wou'd have secur'd those that fought for him; but if he were not so weak as to think *Perkin*, who to get the Crown, pretended to be *Edward's* Son, wou'd after he had got it, have own'd himself a Counterfeit, our Author must conclude, that *Henry VII.* thought this Law strong enough to bind him, tho' he had been the Real Son of *Edward*. And if the Treason of Sir *William Stanley*, as my || Lord *Bacon* tells us, was his saying, that if he was sure that *Perkin* was *Edward's*

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\* p. 168. † p. 171. || *Bacon's Hen. 7. fol. 134.*

Son, he would never bear Arms against him; 'Tis plain, it was, in the Opinion of the Judges of those Times, (who as my Lord *Bacon* says, were great and learned Men) Treason for private Persons, not only to over-rule the Title of the King in Possession, but to refuse Active Obedience to him, when commanded to bear Arms even against one who claim'd by a lineal Descent. And consequently that this Law annexes Allegiance to the sacred Office of Governing, and effectually damn'd that foolish Distinction of Kings *de facto* and *de jure*, which was never heard of till the Quarrels between the Houses of *Lancaster* and *York*; and, for the small Time it lasted, did infinite Mischief: Whereas before that Time, none pretended so much as to the Name of a King, who was not in Possession of the Government; and indeed a King without a Kingdom, would have sounded very strangely in the Ears of our Ancestors.

This Author himself (when he has not the hanging of those in View who have paid their Allegiance to the late and present Government) owns, this Law relates to the King for the Time being, without any Regard to the Distinction of *de jure* and *de facto*, since he \* says, ' This Statute supposes only in general, that Allegiance ' is due to the King for the Time being; the Words ' themselves imply only his Existence, and not the moral Causes or Effects of it.

This Author supposes, what the Peers did in Favour of *Richard Duke of York*, when *Henry VI.* was his Prisoner, and the Parliament in his Power, is against paying Allegiance to the King in Possession; and therefore has publish'd in the *Appendix* the whole Proceedings from the Rolls of the Parliament.

A Man who makes the Proceeding of the Peers, when acting under Restraint, and over-aw'd by a victorious Army, precedents for over-turning the settled Law of the Nation, will be sure to give a wrong Account of our Constitution; but we see, by those Rolls he quotes, that even the Peers then, notwithstanding the Force they were under, ' declare That judging of the Right of

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\* *Intr.* p. 5.



‘ the King in Possession was a Matter too high, and of  
 ‘ such Weight, that it was not for any of the Subjects to  
 ‘ enter into a Communication thereof, without the  
 ‘ King’s high Commandment, Agreement, and Consent  
 had thereunto ; which is owning, that none, no not  
 the House of Peers, ought to question the Right of the  
 King in Possession, except by his own free Consent  
 and Commandment.

And when the Judges excus’d themselves from med-  
 ling in this Matter, ‘ as too high for them, because it  
 ‘ touch’d the King’s high Estate and Regality, and  
 ‘ therefore dar’d not to enter into Communication  
 thereof, the Lords accepted of their Excuse ; and con-  
 sequently, if both these knew any thing of our Consti-  
 tution, the Business of the Judges was not to enquire  
 into the Title of the King in Possession, but to put the  
 Laws, that were made for the Security of his Person, in  
 Execution ; and if this be a Matter too high to be en-  
 quir’d into by the Judges, and even by the Parliament  
 it self, without the King’s free Consent (which perhaps  
 never any King gave) shall every private Man be al-  
 low’d to have a competent Authority to judge in this  
 Matter, and not be determin’d by what his own Re-  
 presentatives, the Commons, the Lords, and every one  
 who has any Authority in the Nation have submitted  
 to ? Thus we see, how the Men of *Anti-Revolution*  
 Principles consult the Safety of the Government, and  
 the Peace of the Community.

Agreeable to the two Acts above-mentioned, it has  
 been a constant Maxim in our Law, that the Crown takes  
 away all *Bars, Letts, Impediments, and Attainders*.  
 This the Judges declar’d to be Law in the Case \* of  
*Henry VI.* upon his Re-adeption, and *Henry VII.* And  
 for this Reason, the Act, which illegitimated Queen *Eli-  
 zabeth*, was never revers’d ; and the not doing it was,  
 as *Cambden* says, by the Advice of the Lord-Keeper  
*Bacon*, founded on that ancient Maxim † of the Law,

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\* *D. Term Michael. 1 H. 7.*

† *Juris prudentia Anglica jam olim pronunciavit coronam  
 semel susceptam omnes omnino defectus tollere.* *Camb. Eliz.*  
*p. 10.*

that

that the Crown entirely takes away all Manner of Defect; in this Case, 'tis absolutely necessary for the Good of the Common-wealth, that the presumptive Will of those, from whom all Kings derive their Right, should be sufficient.

And this is agreeable to another Maxim of our Law, That *Protectio trahit Subjectionem, & Subjectio Protectio-nem*; and consequently, by Possession of the Crown is here meant such a Possession as is consistent with the Nature of Civil Government, and carries with it the Protection of the Peoples Rights and Liberties.

As most of our Kings, before and since the Conquest, could not lay any Claim to the Crown by Virtue of a lineal Descent, so all of them, who were so settled in the Government as to be own'd by the Estates, and had the Laws run in their Names, and all publick Justice administred by those deputed by them, were esteem'd to be good and rightful Kings, not only during their own Reigns, but in all After-times, since their Laws have been allow'd of by all succeeding Kings and Parliaments, and pleaded as good Law in all Courts of Judicature, even when they repealed the Laws of those Kings who had a lineal Descent.

And since this Power of theirs has been acknowledg'd thro' all the Revolutions of Government under the *Saxons* as well as *Normans*; and we can't deny them to have had as competent Authority as any others, without depriving our selves of the greatest Part of the Laws that are now in our Statute Books, and of the Settlements of the best Part of our Estates; the *Jacobites* can have no Pretence to disown the Authority of the late and present Government, or not to allow of the Validity of the Laws, made since the Revolution, with Relation to the Settlement and Succession of the Crown.

Our Author, as he will not allow, that any can be a lawful King, who does not succeed by lineal Descent, Cession, or Donation, so he supposes, \* *That the Acts of one without a lawful Authority are null ab origine*, † *and that Kings de facto have no Legislative Capacity*; ‡ *nor are the Proceedings of their Courts of Judicature of any*

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\* *Intr.* p. 4.    † p. 134.    ‡ p. 136.

*Authority; || and that the common Ends of Government are not attainable under them. And this he supposes was the State of the Nation for threescore Years together, in the Time of the 3 Henrys of the House of Lancaster.*

If this was then the Condition of the Nation, they were for threescore Years together in a State of Nature; because the 3 Henrys who had no Capacity at all, either Legislative or Executive, and whose Acts were all void from the Beginning, could not put them out of that State, nor could there be any Government, when the common Ends of Government were not attainable. But if it be absurd to suppose they were during that whole Time, in a State of Nature, it must be allow'd that they were a Body Politick; and that those they had set at their Head, had a competent Authority to do every thing necessary for attaining the Ends of Government, and preserving the Body Politick: And could the Nation do more than this, when they placed the House of York at their Head?

If that be a lawful Government; under which the common Ends of Government are attainable, the *Jacobites* must own the Government, since the Revolution, to be so, because they by having Recourse to the Laws, made since that Time, and to the Judges who execute them, suppose there's a competent Authority for the making and executing Laws; and that all, tho' it should be a *Non-juring* Brother, with whom they have any legal Contest, are bound to submit to the Sentences of the Judges; and if they do not, that the Government has a Right to command the Force of the Society to oblige them to it.

Our Author, to prove his Point, insists on the Conduct of *Edward IV.* in Relation to the Acts of Kings of the House of *Lancaster*; but tho' the Resentment of that Prince flush'd with Victory transported him so far, as to make him commit many unjust and barbarous Things, and he himself could be no other, even in this Author's Judgment, than one of his *de facto*



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Kings, if the Resignation of his Father *Richard Duke of York* was not deficient (as it has been already shewn it was not) in any thing he suppos'd necessary to convey his Right to *Henry VI.* yet notwithstanding this, we shall examine what he says, to shew, that *Edward IV.* esteem'd the Acts of the 3 *Henrys* to be void, for Want of a lawful Authority; because therein are contain'd his Arguments for proving all the Acts of Parliaments, all the Proceedings of the Courts of Law and Justice, all Pardons, Gifts and Grants from the Crown, since the Revolution, to be void.

He says, by the *Rules of the Common Law* a \* *Confirmation of a void thing is also void*; and the Reason he gives for it is, † *That to be void being the same thing as to have no Existence, it can't be pretended, that a Confirmation gives a Being to that which had none before*; and by the same Reason a void Thing cant be made void, annull'd, repeal'd, or revok'd: And therefore to prove his Point, he ought to shew, that *Edward IV.* never pretended to confirm or repeal the Laws made by the 3 *Henrys*; but that when he had a Mind to have any of them made Laws, he got them to be enacted in Parliament after the same Manner as if they never had been before enacted; and that all Proceedings in the Courts of Judicature began a-new, without any Regard to the Sentences of those Judges, who in acting by an incompetent Authority were as liable to be punish'd, as if they had acted by none at all.

But our Author, instead of proving that *Edward IV.* took this Method to shew the World, that the Acts of the 3 *Henries* were all invalid, endeavours to prove it from his confirming them, and says, the Extra-parliamentary Acts of the 3 *Henries*, 'were not look'd on as valid, is evident by the confirming 'them || by the 1 of *Edward IV.* for why, says he, 'were they confirmed if they did not need it. Whereas by the Rules he himself has lay'd down, their being confirmed by Parliament was a Demonstration they

\* p. 151.

† p. 152.

|| p. 134.



were not Acts done by an invalid, or incompetent, or null Authority.

In the Acts of a King done out of Parliament, there are Pardons, Licences, Gifts, and Grants, whose Validity may be question'd, tho' done by any King whatever, because a Pardon may be defective, the Prince may be deceiv'd in his Grants; and there's no Man but thinks an Act of Parliament a better Security for his Estate, than the Determination of any Judges; so that *Edward IV.* confirming by Parliament the Extra-parliamentary Acts of the 3 *Henrys*, was the highest Respect he could pay them.

Had he first declared them void from the Beginning, and then confirm'd them, that, since a void Act is not capable of being confirm'd, would only have been contradicting himself, and saying they were void and not void. And if we have no Instance of any King, having so little Regard to the judicial Acts that were done in his Predecessor's Reign, as to suppose them null *ab initio*, and so not capable of being confirm'd, it shews, that no Prince ever look'd on his Predecessor to want a competent Power for carrying on the Ends of Government.

To shew, that the Parliamentary Acts of the 3 *Henries* had no Validity, he says some of them, \* relating to the Town of *Shrewsbury*, and the founding some religious Houses, were confirm'd by *Edward IV.* and this he will have to amount to a Proof, that not only these were invalid Laws, but that even all those numerous Acts of theirs, which were never confirm'd, were likewise void. And, after he has argued a good while from the Confirmation of these Laws against the Legislative Capacity of the 3 *Henries*, he says, 'the true † Reason 'why these Acts of Parliament were confirm'd, seems 'to have been rather to secure them from the Acts of Resumption, which pass'd just before in this Sessions of Parliament, than to supply the Defects of Authority in the House of *Lancaster*.

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\* p. 144.

† p. 147.

All Acts of Parliament owe their Force at all Times to the Authority of the then Legislators, whose presum'd Will it is, that those Acts of their Ancestors, which they do not repeal, shall remain in Force ; and confirming Laws, is turning a presum'd Will into an exprefs Will : And when any Laws are of the greatest Consequence to the Subject, or our Kings are not very careful to observe them, all wise Parliaments have got them confirm'd ; hoping what was so lately done, by the *exprefs* Consent of the Kings themselves, might have the greater Force on them : Thus \* *Magna Charta* has been thirty Times confirm'd in Parliament.

But this Author himself does not believe, that those Kings, he calls *de facto*, had so little Power as he here pretends they had, since he says, † that *Richard III.* with Regard to *Henry VII.* was a King *de jure*, which was the Reason that *Henry* repeal'd those Laws of *Richard* he had a Mind to get rid of. And how can any King get rid of any Laws made by his Predecessor but by repealing them ? Nay, this Author supposes, ‖ that King *William* and his Convention-Parliament had a Power of repealing Laws ; and therefore makes the 11 of *Henry 7.* to be repeal'd by the 1 of *William 3. Sess. 2. c. 2.*

After this Author has for several Pages together pretended to prove by Arguments, which demonstrate the contrary, that the Acts of the 3 *Henries* were void from the Beginning, he is at last contented to allow them a Power to make a Sort of a Middle between Laws and no Laws, that were not compleatly valid without a Confirmation from *Edward IV.* nor void without his declaratory \* Act, otherwise they would remain in a precarious Condition during his Reign.

An honest Writer would not have amus'd us with Words on so important a Subject, but have told us the Difference between valid and compleatly valid, or between void and not void ; the precarious Condition of the Laws of the 3 *Henries* ; but I believe we shall find, that 'tis not their Laws, but our Author's Hypothesis is in a precarious Condition.

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\* *Sidney of Government*, p. 356. † p. 157. ‖ p. 178. \* p. 153.

He says,\* ' if he may presume to speak freely on a Subject, which he is by no means qualified to be confident in (a Truth he has fully prov'd in every Page ) he is of an Opinion, That, ' tho' some of the Acts of the 3 *Henries* were actually void upon *Edward's* Accession to the Throne, yet the greatest Part were only voidable by him, viz. all those Acts of Parliament which did not in the least prejudice the Interest of the King *de jure*, but were also conducive to the general Good of the Subject, and the Peace and Happiness of the Government: But then they entirely depended on the Pleasure of *Edward IV.* whether their Authority should be fully establish'd, or utterly rejected.

For my part I can't help thinking, that the 3 *Henries* and their Parliaments either had, or had not a Legislative Capacity; if they had, their Laws could only be repeal'd by the same Power that made them; if they had not, then their pretended Laws were no Laws, had no Being, or were always void; and consequently could not be made Laws but by being enacted by Parliament. It's very strange, that the 3 *Henries* usurping a Power which did not belong to them, could not only give *Edward IV.* a Right, which otherwise he could have no Pretence to, but deprive the Parliament of their Right.

He says, ' the Laws of the 3 *Henries* were good against the Subject, who had already given his † Consent to them, yet they did not bind the King against his Will; if this be good Reasoning, then all Kings would have an absolute Power over all the Laws made by any of their Predecessors, except those only to which they, when Subjects, had consented; and *Edward IV.* could have been bound by no Laws but those of *H. 6.* under whom this || Author says, ' he liv'd many Years in great Honour and Prosperity.

If the Laws of the 3 *Henries* did bind the Subjects during their Reigns, and only became some void, and others voidable, upon *Edward's* coming to the Crown, this supposes they had a Right to make Laws, and they, who had a Right to make Laws, could not want a Right

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\* p. 153. † lb. || p. 126.



to execute Laws, and consequently must be rightful Kings.

He says, ' the Acts of the 3 *Henries*, remaining on \* Record, were executed without any Interruption from the King, and therefore were of Force only by his Permission; if so, his declarative Act was not necessary to give them Force; nay the Judges must suppose, those Acts were valid from the Beginning, because when they first executed them, they could not think they had then their Force from the Kings permitting their Execution without any Interruption.

He says, ' the Laws of the 3 *Henries* were of no † Authority by Virtue of the Legislative Capacity in the Makers of them; but being of publick Use and Service, by the Sufferance of *Edward* and his Successors, and the Approbation of the People, they have been constantly receiv'd and executed, as if they were made by Princes of an undoubted Title.

But if their Laws did not obtain their Force, as Acts of Parliament, but like common Law by a constant and uninterrupted Practice, they could have no Force by Virtue of any declarative Act of *Edward*, or obtain any Force during his Reign, or in a long Time after, till they could plead an immemorial Prescription.

He supposes, || ' That the Laws, of those he calls Kings *de facto*, may have obtain'd, as he says the Pope's Laws did by royal Sufferance, and free Consent of the Subject.

Our Nation was so bigotted in former Times, as to imagine, that the Pope, as Head of the Church, had a Power to make Laws for the Christian World; but they were no sooner convinc'd of the Absurdity of that Notion, but the *Papal* Laws would have lost all their Authority, had it not been for the 25th of *Henry VIII*.

Nothing can be more wicked, as well as foolish, than to start such Notions, as leave us in the Dark, about what Laws are obligatory, and what not? how can it be expected, that People shou'd agree (supposing

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\* p. 153. † p. 14. || *Ib.*

a ground for the distinction) who are Kings *de jure* and *de facto*, when our Author can't agree with himself about *Henry VII.* sometimes making him one, and sometimes the other just as it serves his Purpose; or if they shou'd agree about that matter, they wou'd still differ, whether such Laws made by a King *de facto* had obtain'd a sufficient Authority by prescription; or were capable of obtaining it? that is, whether they were Laws that did not in the least prejudice the Interest of the Kings *de jure*, and besides, were of publick Use and Service; not only different Men, but different Parties are very much divided about what is for the interest of the King, as well as what is of publick Use and Service, and consequently what wou'd appear good Laws to some, wou'd not by others be thought to have the least obligation; and had the Laws of so many of our Kings obtain'd after this manner, the Law Books wou'd be full of Cases of this Nature; but they are so far from teaching us any such Doctrine, that without any such distinction, they quote the Laws made by these, our Author calls Kings *de facto*, not as Common but Statute Laws, made in such a Reign and such a Year of the Kings Reign, and pay the same Regard to the Laws of a King, who came to the Throne by deposing the next of Kin, as if he himself had a lineal descent.

Shou'd a Man vent such whimsies in any of our Courts of Judicature, I know what Place he wou'd be thought fit for, especially if he shou'd, like our Author, give so wild an Account why the Laws, not only of *Henry VII.* but *Richard III.* are in Force, viz. That ' *Henry VIII.* had too much Respect for his Father to set a publick Mark on him as an \* Usurper, by Annulling his Acts, and none of his Successors wou'd afterwards give themselves the Trouble of calling their Authority in question.

It's a Maxim with our Author, that a King *de jure* can declare the Acts of a King *de facto* null and void, but that a King *de facto*, has no Power over the Acts

of a King *de jure*; but this, since no King will own himself an Usurper, or King *de facto*, will alike give all Kings a Power over the acts of those whose Titles they disapprov'd.

And since the House of *Lancaster* charg'd the House of *York*, as our Author observes, with having Falsely, Traiterously, and Usurpingly seiz'd on the Crown, the Kings of one House cou'd not pretend to any Power by vertue of being Kings *de jure*, but what the others wou'd alike claim; and consequently the validity of all the Acts of *Edward IV.* and *Richard III.* wou'd have depended on the pleasure of *Henry VII.* And *Henry VIII.* had it in his Power to have annull'd all the Acts either of the House of *York* or *Lancaster*; and by the same Reason, the Laws of Queen *Mary* begotten in Incest, cou'd not have been obligatory to Queen *Elizabeth*, and King *James*, if he had no Mind to have own'd the Legitimacy of Queen *Elizabeth*, wou'd not have been bound by any of her Acts; and our Author who impudently makes King *James* to come to the Crown contrary both to Acts of Parliament, and the Right our Kings have by Common Law, of disposing of the Crown by Will, if he be consistent with his own Principles, must think that neither his, nor his Successors Acts have the same Force as those made by Kings *de jure*.

Our Author in all Likelihood borrowed this Notion from the Promoters of Persecution; with whom 'tis a constant Maxim, that those in Power, who are of the true Religion, have a Right to persecute Men of false Religions; which, since every Magistrate thinks his own Religion to be true, subjects all Religions, but the National, alike to Persecution, and does as much Mischief to Mankind, as our Authors notion, if it were admitted, wou'd do to the State.

According to our Authors Scheme, our Liberties can't be Safe but under an Usurper; for tho' it be contrary to *Magna Charta*, and the very being of Parliaments, for the King to raise Money by his own Authority, yet this Author, to shew how Absolute the Power of a King *de jure* is, tells us that *Henry VIII.* exacted



‘ exacted by his own Authority, by way of \* Loan;  
 ‘ 10 *perCent.* of all Goods, Utensils and Lands, accor-  
 ‘ ding to the extremest Rate, reveal’d by the Oath of the  
 ‘ Possessor; and this he justifies, because there was no  
 Law, as he says against it, but what was made by a  
 King *de facto*.

I once thought to have paid an unusual Compliment  
 to this Author, and to have confuted him without con-  
 tradicting him, by only putting his own Contradi-  
 ctions together; but then, I saw, I must have been  
 oblig’d to transcribe the best part of his Book, so full  
 is it of Inconsistencies.

And whoever will endeavour to shew that by our  
 Constitution, none but *Right Heirs* have had a Com-  
 petent Authority for Government; and that the Acts  
 of all others, tho’ they were entrusted by the Nation,  
 with the Administration of their Civil Affairs were  
 null and invalid, must unavoidably talk after this  
 Rate.

We must suppose, that either none but *Right Heirs*  
 can put Men out of a State of Nature; and that it is  
 impossible for a People to be politically united to a-  
 ny other as their Head, or else we must allow, that  
 when a Nation (which can never unalterably tie it  
 self down) varies from their usual Method relating to  
 the Succession, and intrusts Persons, who have no Pre-  
 tence to *Heirship* with the Administration of their Civil  
 Affairs, That those Persons have a sufficient Authority,  
 to do every thing that’s Necessary for the Support of  
 the Body-Politick; and which will answer the End of  
 their being set over them.

To deny this, wou’d be to strike at the Authority  
 of all the Governments in the World, which are ow-  
 ing to some Revolution or other; none of which can  
 be more justifiable than that lately made, in defence of  
 our Laws, Liberties and Religion.

If *Hugh Capet* was not a Rightful King, when the  
*French* rejected *Charles of Lorain*, the deceased King’s  
 Uncle for making pernicious Alliances, and plac’d him,  
 no ways related to the Crown, on the Throne, I

would be glad to know, when the Kings of this Line began to have a Right; and I might ask the same Question, with Relation to the Royal Branch, of the Family the of *Stuarts*, which was set on the Throne by the *Scots*, when they excluded *Baliol* their King, and all his Posterity, for his Male Administration.

The Nation would have been oblig'd to this Author, (since he must needs know what is intended) for putting them in mind of the miserable State, they must fall into, if the *Pretender* prevails; had he not done it insultingly, and with an air of Triumph. \* He lets the Clergy know, they have no Right to the Preferments bestow'd by the Crown, since the Revolution, nor the Lords to their Titles, and that no Grants made by the Crown since that time are good; And that all our Parliamentary Securities must fall of Course; and that none of the Laws, or any Legal Securities for our Estates are valid.

But even this is not the worst, for he says; † ' I desire those who think, that the 11 of *Henry VII.* upon a proper Occasion, may be of use to the Adherents of a King *de facto*, to abate of their Confidence, till those who are the Judges of such Matters have, by their Publick Resolutions, determin'd the Sence of it. If it should happen in a Country, given to change, that a King *de jure*, sometime or other, should by Force and Violence, dispossess a King *de facto*, who can be sure what the Opinion of the Parliament, and Judges may be, when those, who have follow'd the Fortunes of the King in Possession, shall plead this Statute for Impunity; it may possibly at last be determin'd agreeably to the Opinion I have now deliver'd.

Would any Man, who did not think that Measures were so concerted, that the *Pretender* could not fail of Coming in, threaten the Nation with Vengeance, with nothing less than Hanging, for paying their Allegiance to the Late and Present Government.

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\* p. 135. † p. 170.

That People may not mistake his Meaning, and that they may know who are like to suffer, he says ;  
 \* when ever the *Heir* shall recover his Right, there's  
 no Law to shelter from his Resentment, such as oppos'd his Claim, and lent their Assistance to his Enemy ; whoever took up Arms for him, or assisted him with Men or Money ; the Soldiers that fought for him, the Divines that made it Gospel ; and the Gentlemen of the *Inns of Court*, who made it Law, are all involv'd in the Guilt of departing from their Allegiance : And this he pretends his Adversary must allow.

He says another thing, which certainly ought to be well consider'd by our *English* Gentry and Nobility, which is ; † That *William I.* distributed the Earldoms, Baronies, Bishopricks, and Prelacies, of the whole Land to his *Normans*, who hated the *English* at that Rate, that whatsoever their Merit might otherwise be, they depriv'd them of all Dignities, and sent for worthless Foreigners from all Parts, to fill their Places. And he makes the Condition of the *English* Nobility and Gentry, to be then so Miserable, that he says ; a great Part of them fled into *Scotland*, some into *Denmark* and *Ireland*, and others to *Constantinople*. And if but one Province of *France*, durst treat the *English* after this Rate ; what may not the whole, now most Powerful Kingdom do, if ever a Papist bred up in *French* Maxims, and govern'd by *French* Councils prevails ? When their Ancient hatred is so much increas'd by the Difference of Religion ; Will they not bring with them worthless Foreigners, to fill all Places, Ecclesiastical, Civil, and Military ? And will not then our Nobility and Gentry, whatever their Merit otherwise might be, either be destroy'd, or sent to the Gallies or Mines ; the useful Hands transported to *France*, and the Earldoms, Baronies, Bishopricks, and Prelacies of the whole Land given to Foreigners, who then will come over in whole Shoals, to enjoy the Spoils of the Country.

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\* p. 176. † p. 72.



Tho' we may safely relie on the *bona fide* of the Present Monarch; who can tell, but that in a Succeeding Reign, tho' the *Chevalier's* Interest may be pretended, yet that Conquest may be the Real Design? And what will not then 200000 Regular Troops be able to effect, (part of which may be wasted over every Tide) if they shou'd be join'd by a Party at Home? If this Consideration will not unite all Protestants, what will become of the Poor Nation? *Spare thy People O Lord, whom thou hast so often Redeem'd?*

## F I N I S.

## E R R A T A.

Page 24. l. 16. after *the*, add *strictest* eyes of. p. 32. l. 28. after *was*, add *not*. p. 48. l. 10. after *a r.* little instead of *little*. p. 53. l. 19. *r.* be instead of *do*. p. 59. l. 4. after *to add be*. p. 62. l. 34. *r.* his instead of *this*. p. 75. l. 43. *preceded* instead of *proceeded*.

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